

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN

BCI Acrylic, Inc.	§
	§
Plaintiff,	§
	§
v.	§
	§ CIVIL ACTION NO.: 2:23-cv-00908-JPS
Milestone Bath Products Inc.	§ Judge J.P. Stadtmueller
(d/b/a Bellastone Bath Systems) and	§
TightSeal Exteriors And Bath	§
	§
Defendants.	§
	§

ORAL AND VIDEOTAPED DEPOSITION OF JEFFREY WHITLEY,
pursuant to Rule 30(b)(1) taken at 9:06 a.m., Wednesday,
December 6, 2023, at the Fairfield Marriott, 407 Front
Street, Belleville, Ontario, Canada, K8P 3L8, before
Laurie Barker, Court Reporter, and Travis Jewell, Legal
Videographer.

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8

9 FOR MILESTONE BATH PRODUCTS INC.

10 (D/B/A BELLASTONE BATH SYSTEMS) AND

11 TIGHTSEAL EXTERIORS AND BATH

12

13 BY: ERIK J. HALVERSON, ESQUIRE

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20 VIDEOGRAPHER:

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22

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24

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JEFFREY WHITLEY, Affirmed

EXAMINATION BY MR. REMUS 5 to 115

RE-EXAMINATION BY MR. HALVERSON 115 to 117

CERTIFICATION 118

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1 U.S. Patent 10,144,243.	31
2 Declaration of Mark Domanico	36
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4 Email thread bearing Production No. MBP-000005	82
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9 Email from Mark Domanico to Scott Rosenbach	
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10 Email from Mark to Jeff copying Scott bearing	
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11 Email from David Glassberg to	
jeff@bathsolutions.ca bearing Production No.	
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12 Email thread bearing Production No. MBP-000057	
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1 MR. JEWELL: We are now on the record at 14:04
2 UTC, on December 6, 2023. Audio and video
3 recording will continue to take place until all
4 parties agree to go off the record. Please note
5 that microphones are sensitive and may pick up
6 whispering and private conversations.

7 This is the video-recorded deposition of Jeff
8 Whitley being taken in the matter of BCI Acrylic
9 versus Milestone Bath Products. My name is Travis
10 Jewell, I'm a legal videographer on behalf of U.S.
11 Legal Support. I am not related to any party in
12 this action nor am I financially interested in the
13 outcome.

14 At this time would counsel state their
15 appearances for the record after which the Court
16 Reporter will swear the witness.

17 MR. REMUS: Mark Remus on behalf of BCI Acrylic,
18 Inc.

19 MR. HALVERSON: Erik Halverson on behalf of
20 Milestone Bath Products Inc. and TightSeal LLC, as
21 well as the witness. With me today in the room as
22 well is Devon Beane. Both of us are from K&L
23 Gates LLP.

24 MADAM REPORTER: Laurie Barker, Court Reporter.

25 Okay, could you please begin by stating your

1 name for the record?

2 THE DEPONENT: My name is Jeffrey Whitley.

3 MADAM REPORTER: And do you affirm that the
4 evidence you're about to give today, touching on
5 the matters in question herein, shall be the
6 truth, the whole truth and nothing but the truth?

7 THE DEPONENT: I do.

8 MADAM REPORTER: Thank you.

9 We're on record, Counsel.

10 BY MR. REMUS:

11 Q. Good morning Mr. Whitley. Could you
12 please state your residence address?

13 A. My residence address is 1284 Old Highway 2,
14 Belleville, Ontario, K8N 4Z2.

15 Q. Have you been deposed before?

16 A. Yes.

17 Q. How many times?

18 A. Once.

19 Q. When was that?

20 A. Approximately four years ago.

21 Q. What did that case concern?

22 A. A business that owed my business money.

23 Q. Who -- And your business being Milestone?

24 A. Not at the -- There's two Milestones that are
25 businesses that I've had, separate businesses. One

1 called Milestone Bath Products Inc., and another one
2 called Milestone Bath Experts Inc., so Milestone is a
3 little confusing there. But it was relating to
4 Milestone Bath Experts Inc.

5 Q. Who was the other party?

6 A. A company called Five Star.

7 Q. Is that litigation ongoing?

8 A. No.

9 Q. During the deposition today we'll try to take
10 breaks periodically. I usually aim for about once
11 every hour; if you need to break more often, please by
12 all means speak up. Whenever -- We're happy to break
13 whenever you need to. All I ask is that you answer any
14 outstanding questions before we break. Is that okay
15 with you?

16 A. I'm okay with that, yeah.

17 Q. If I ask any --

18 MR. JEWELL: Okay, excuse me.

19 MR. REMUS: Yes?

20 MR. JEWELL: This is Travis, the videographer.

21 Could the questioning attorney please speak
22 up, please?

23 MR. REMUS: Sure.

24 BY MR. REMUS:

25 Q. If I ask any questions today that you find to

1 be confusing or unclear, will you ask me to clarify
2 those questions?

3 A. Yes, I will.

4 Q. What is your educational background?

5 MR. HALVERSON: Objection. Form.

6 A. My background after -- after public school is
7 I'm a Civil Engineering Technologist. I went to
8 college for three years.

9 Q. Where did you go to school?

10 A. At Loyalist College.

11 Q. Did you get a degree?

12 A. I -- I did graduate. They don't use the
13 degree here in -- in Ontario in the -- in the same way,
14 but I did -- I did graduate fully.

15 Q. What is a Civil Engineering Technologist?

16 A. A Civil Engineering Technologist is not a --
17 an engineer with a stamp but they -- a Civil
18 Engineering Technologist usually works under a Civil
19 Engineer and, you know, does all the beam calculations
20 for structures -- bridge structures, road structures,
21 buildings, high-rises; you know, civil -- Civil. Every
22 -- Water and wastewater. It's -- It's very broad.

23 Q. Any other formal education?

24 A. Some years later I was a graduate of a -- a
25 private course in running Kaizen events, which is a

1 continuous improvement, more related to manufacturing.

2 Q. What all did that course involve?

3 MR. HALVERSON: Objection. Form.

4 A. That -- That course involved training on how
5 to run what's called a Kaizen event, which is a
6 continuous improvement event where you take a large
7 group of people, generally in manufacturing, although
8 it can be in -- in other industries as well. And the
9 company I was working for at the time hired a
10 speciality company to come and train me and run events,
11 and -- so that I would graduate and be able to run
12 those events for the company.

13 Q. Do you have any specialized training with CAD
14 software?

15 A. CAD software I used in college but never
16 since.

17 Q. Do you have any specialized training with CNC
18 machines?

19 A. I do not program CNC machines. I'm very
20 aware of the capability of CNC machines all throughout
21 my -- my previous career. I was involved in tooling; I
22 was involved in, you know, production using those type
23 of machines, but I'm -- I'm not a programmer per se. I
24 was a level up from that and we would have, you know, a
25 junior programmer typically do the actual programming.

1 Q. What was your first job after graduating
2 as a Civil Engineering Technologist?

3 A. I worked for the Ministry of
4 Transportation Ontario, the Ontario Government.

5 Q. What were your responsibilities in that
6 position?

7 A. I was a Construction Inspector. So when
8 we did, you know, multimillion-dollar construction
9 projects throughout the province, building brand-new
10 bridges for example; asphalt testing; you know, high
11 level inspection of -- you know, not day-to-day
12 activities but the multimillion-dollar projects that
13 the -- that the government worked on.

14 Q. How long were you in that position?

15 A. Seven years.

16 Q. Do you remember the approximate years that
17 you were in that position?

18 A. I was in that starting in 1991, I believe.

19 Q. So about '91 to '98?

20 A. It might have been '97, but in that range
21 for sure.

22 Q. What was your next job after that?

23 A. After that I went to a company called
24 Deloro Stellite.

25 Q. What did that company do?

1 A. It was a high-end manufacturer, aircraft
2 products and -- You know, for example, the -- the
3 veins that are on turbine engines, we produced
4 those. Parts for the oil industry that go miles
5 into the ground and a very speciality product.
6 Speciality -- The actual material is called
7 stellite; it's a very special material.

8 Q. What position did you have there?

9 A. I started there as a Technical Estimator
10 and then I moved -- was promoted to a Production
11 Planner in the Investment Casting Department and I
12 worked on all the job planning and supported the
13 staff through all aspects. We had a large machine
14 shop that would machine the -- the parts to -- to
15 final spec.

16 Q. Did you have any other positions at Deloro
17 Stellite?

18 A. That was the two -- only two positions
19 generally, although I did some -- I did some sp- --
20 quite a few special projects for them.

21 Q. When did you leave Deloro Stellite?

22 A. 1998 or '99.

23 Q. How long were you there?

24 A. Approximately two years.

25 Q. What was your next position after Deloro

1 Stellite?

2 A. After Deloro Stellite I worked at a
3 company in Port Hope called ESCO, E-S-C-O.

4 Q. What does ESCO do?

5 A. All manufacturing, multiple plants
6 throughout the world.

7 Q. Is that the same ESCO that's based in St.
8 Louis?

9 A. It very well could be. They did -- They
10 do have a presence there.

11 Q. What was your position at ESCO?

12 A. I can't recall my title but it was in
13 production, planning, management. Continuous
14 improvement would have been the -- the big piece of
15 it, and that is where I was trained on the Kaizen.

16 Q. How long were you at ESCO?

17 A. I was there one year.

18 Q. Do you remember the approximate years that
19 you were there?

20 A. 2000.

21 Q. What was your next position after ESCO?

22 A. I was hired out of ESCO to a company named
23 PYROTENAX.

24 Q. What does PYROTENAX do?

25 A. PYROTENAX is also a manufacturer. A very

1 different industry. They produce fireproof high
2 heat electrical cables primarily for the oil
3 industry for their safety equipment.

4 Q. What was your position at PYROTENAX?

5 A. Continuous improvement, engineering. Like
6 continuous improvement is -- is engineering but it's
7 more process engineering.

8 Q. What years were you at PYROTENAX?

9 A. In the 2001/2002 range.

10 Q. And what was your next position after
11 PYROTENAX?

12 A. That is when I was fully self-employed.

13 Q. And what did you do when you were self-
14 employed?

15 A. In 1996 I started a bath remodelling
16 company.

17 Q. What was the name of that company?

18 A. Bath Solutions, which later became
19 Milestone Bath. I did a branding change but the
20 same corporation.

21 Q. So which -- You mentioned a couple of
22 Milestones earlier. Which Milestone did Bath
23 Solutions become?

24 A. Milestone Bath Experts Inc.

25 Q. Do you recall when that name change took

1 place?

2 A. In 2013.

3 Q. Why did the name change?

4 A. I had used that brand for multiple
5 companies and franchised that business. The -- So
6 the franchise -- When I sold the franchising entity
7 they took the brand, so I rebranded. So that was in
8 2013.

9 Q. What was the business of Bath Solutions?

10 A. Bath Solutions -- The brand Bath
11 Solutions, even though it was two different entities
12 -- one did franchising, collected royalties, and --
13 and offered up systems and product to a small group
14 within Canada of franchisees. The Bath Solutions
15 Inc., again now Milestone Bath Experts Inc.,
16 continued to do local renovations in the
17 Belleville/Kingston area, and did wholesale sales to
18 the franchisees and -- and other customers of bath-
19 related products, and that is -- in that period we
20 began manufacturing some of our own products and --
21 as well as buying products from other companies and
22 wholesaling them. Approximately 10,000 products
23 sold. We certainly didn't make 10,000 products. We
24 manufactured some and purchased and resold other
25 products.

1 Q. Which -- Which products were manufactured
2 by either Bath Solutions or Milestone Bath Experts?

3 A. Acrylic bath and shower wall systems and
4 the accessories to go along with them.

5 Q. When was Milestone Bath Products Inc.
6 formed?

7 A. Approximately 2008.

8 Q. And what was the reason for forming
9 Milestone Bath Products Inc.?

10 A. The reason was to separate the renovation
11 business from the manufacturing and wholesale
12 business.

13 Q. Does -- Bath Solutions no longer exists
14 today, correct?

15 A. The brand or the company? I'm not clear.

16 Q. The company. Does the company Bath
17 Solutions exist today?

18 A. Bath Solutions Inc. changed its name to
19 Milestone Bath Experts Inc. and it does still
20 continue today, yeah.

21 Q. And -- Scratch that. What was your
22 position with Bath Solutions Inc.?

23 A. I was the founder and CEO.

24 Q. What was your position with Milestone Bath
25 Experts Inc.?

1 A. It's -- That's the same company, same
2 position.

3 Q. And what is -- was your position with
4 Milestone Bath Products Inc.?

5 A. The CEO.

6 Q. Were you also the owner of Milestone Bath
7 Products Inc.?

8 A. No.

9 Q. Who was the owner of Milestone Bath
10 Products Inc.?

11 A. My wife, Catherine Whitley.

12 Q. Sitting here today do you have any
13 positions with either Milestone Bath Products Inc.
14 or Milestone Bath Experts Inc.?

15 A. My position with Milestone Bath Experts
16 Inc. is retired. My position with Milestone Bath
17 Products Inc. is President.

18 Q. You mentioned that previously you were the
19 CEO of Milestone Bath Products Inc. Was that at its
20 inception that you were the CEO?

21 A. Yes.

22 Q. Okay. And eventually that title changed
23 from CEO to President, is that correct?

24 A. Correct.

25 Q. When did that change?

1 A. That changed just over a year and a half
2 ago.

3 Q. What was the reason for that change?

4 A. My wife sold the shares of the business.

5 Q. Who did she sell those shares to?

6 A. There's a numbered company that I can't,
7 obviously, recall the number, but Ian Langdon is now
8 the CEO.

9 Q. Is Mr. Langdon the current owner of
10 Milestone Bath Products Inc.?

11 A. Yes.

12 Q. Do either you or your wife currently have
13 any ownership interest in Milestone Bath Products
14 Inc.?

15 A. No.

16 Q. Is there a company by the name of
17 Bellastone Bath Systems?

18 A. Not a company, no.

19 Q. What is Bellastone Bath Systems?

20 A. Bellastone is a trademark owned by
21 Milestone Bath Products Inc.

22 Q. When was that name created?

23 MR. HALVERSON: Objection, form.

24 A. I don't recall a date, an exact date on
25 that or -- or year. I would say approximately five

1 years ago.

2 Q. Why was that name created?

3 A. Just marketing purposes as a product
4 brand.

5 Q. Was the name Bellastone used with a
6 particular category of products?

7 A. All of the acrylic wall systems and the
8 accessories that go along with that would be branded
9 as Bellastone.

10 Q. Have you had any either positions or
11 ownership interests in any bath product companies
12 other than Bath Solutions Inc., Milestone Bath
13 Experts Inc., and Milestone Bath Products Inc.?

14 A. Bath Solutions Franchising Corp., I was
15 the owner of that as well. The official -- The
16 official business name was Bath Solutions Dealership
17 Corp. Inc.

18 Q. Are you currently employed by any company
19 today other than Milestone Bath Products Inc.?

20 A. No.

21 Q. What are your responsibilities as the
22 President of Milestone Bath Products Inc.?

23 A. I run the day-to-day operations at a high
24 level. A manager under me that runs the -- the
25 minutiae of the business. I do the technical work

1 within the business, so any technical problems that
2 we have I'm usually the -- the troubleshooter and
3 coming up with the solutions for those things.

4 Q. What was your reason for getting into the
5 bath products business in '96?

6 A. The -- My position with the Ontario
7 Government, with the Ministry of Transportation, we
8 had a government change. The Harris Government came
9 into Ontario. They laid off 10,000 public servants
10 and I was foolish enough to decide to get into
11 business for myself.

12 Q. And so you were doing your remodelling
13 business with Bath Solutions at the same time you
14 were also working for a number of these companies we
15 discussed earlier today?

16 A. That's correct.

17 Q. Okay. And then you committed full-time to
18 your bath remodelling business in approximately 2002
19 after you left PYROTENAX?

20 A. That's exactly correct.

21 Q. Okay. Why did you make that decision?

22 A. PYROTENAX sold their business to another
23 company, General Cable I believe it was, and they
24 had some layoffs happening. I was a victim of the
25 layoff and that was my decision that I would -- The

1 bath renovation business was very successful at that
2 point in time. I decided that it was -- it was time
3 to -- to go full-time at that.

4 Q. When did Bath Solutions first start
5 manufacturing its own products?

6 A. Approximately 20 years ago.

7 Q. So approximately 2003?

8 A. In -- In that range. Definitely fif- --
9 Definitely over 15 years ago. In between 15 and 20
10 years ago.

11 Q. Do you recall the first product that Bath
12 Products -- or I'm sorry, Bath Solutions
13 manufactured?

14 A. I would think it was the accessories to go
15 along with the acrylic wall systems is where we
16 started.

17 Q. In 2003 was Bath Solutions manufacturing
18 its own acrylic walls?

19 A. It -- Definitely in the 15- to 20-year
20 range. I -- I cannot pinpoint an exact year but in
21 that range.

22 Q. Can you describe for me the acrylic walls
23 that Bath Solutions first started manufacturing 15
24 to 20 years ago?

25 A. We began with a -- a white plain smooth

1 sheet of acrylic made -- made to our particular
2 specification, and colors and thicknesses, and those
3 kind of things.

4 Q. Did those sheets have simulated tile
5 patterns on them?

6 A. Not at that time.

7 Q. When was the first time that Bath
8 Solutions or one of the Milestone entities sold --
9 or excuse me, manufactured an acrylic bath wall with
10 simulated tile patterns?

11 A. Twelve to 15 years ago.

12 Q. How were those patterns formed on the
13 acrylic sheets?

14 A. We produced a mold that had the
15 representative tile patterns for vacuum-forming.

16 Q. How did that molding process work?

17 A. It's a tool that's produced.

18 Q. How does the tool work?

19 A. The -- Well, the tool itself is static and
20 -- and is the reverse impression of the product
21 itself, of the finished product, it's the reverse
22 impression. The process itself, if that's what
23 you're asking me, works with a large oven. The
24 sheet is heated; it's placed over the mold; vacuum
25 is applied, it forms the semi- -- semi-flexible

1 sheet into the finished product.

2 Q. How long did either Bath Solutions or the
3 Milestone entities manufacture simulated tile walls
4 using the molding process you just described?

5 A. From then and to -- and currently we still
6 do.

7 Q. Was there a point in time where Milestone
8 or Bath Solutions started using a different process
9 to create simulated tile bath walls?

10 A. Yes.

11 Q. When was that?

12 A. 2014.

13 Q. And what is the new process that -- And
14 actually in 2014 Bath Solutions Inc. was -- did not
15 exist anymore, right?

16 A. The -- The corporation still existed, it
17 was just rebranded as Milestone Bath Experts Inc.

18 Q. Okay. Who was manu- -- So in 2014 who was
19 manufacturing the acrylic walls using this new
20 process?

21 A. By that point the businesses had been
22 separated, and it was Milestone Bath Products Inc.

23 Q. What was the process that Milestone Bath
24 Products Inc. started using in 2014 to form the
25 simulated tile patterns on acrylic sheets?

1 A. At that point we used a CNC machine, a
2 commonly available CNC machine, and grooved the --
3 grooved the grout lines into the sheets.

4 Q. What was the manufacturer or model of the
5 CNC machine that you used?

6 A. We used a -- a third party to -- or
7 initially, before we purchased our own CNC machine
8 to do the -- to do the production.

9 Q. Who was that third party?

10 A. A -- A company named Optima.

11 Q. Do you know the CNC machine that Optima
12 used?

13 A. I do not know the -- the brand or model.
14 It was a commonly available machine. It wasn't a
15 specialty -- You know, it wasn't something they made
16 or anything like that, it was just a common machine.

17 Q. Who is Optima?

18 A. They are a -- a manufacturing and printing
19 company in the Ottawa, Ontario area. I think -- I
20 believe they're just across the -- just across the
21 border into Quebec actually.

22 Q. And in -- in 2014, was it Optima who was
23 manufacturing the acrylic bath walls with a
24 simulated tile pattern for Milestone bath products?

25 A. Yes.

1 Q. When did they start that -- When did they
2 start manufacturing those panels?

3 A. In -- In 2014.

4 Q. When did Milestone Bath Products start
5 selling the products that Optima was manufacturing
6 for Milestone Bath Products?

7 A. I don't know the exact month but it was
8 early -- early 2015, I believe. We may have sold
9 some in 2014. Trial runs or testing for the then-
10 related renovation business that I owned may have
11 done some installs as testing and learning about the
12 product. We may have done that but --

13 Q. Do you know the month in 2014 that Optima
14 first made a bath wall with a simulated tile pattern
15 made used a -- using a CNC machine?

16 A. I don't recall an exact month.

17 Q. Did Optima send prototypes of those walls to
18 you?

19 A. Yes, and I've also attended their facility
20 as well.

21 Q. Do you recall when you first received
22 samples of the tile walls made using a CNC machine?

23 A. Specifically from Optima or from --

24 Q. Yes.

25 A. In 2014, but I, you know, I would say mid-

1 to late-2014.

2 Q. Do you recall when you first visited
3 Optima to see the process live?

4 A. I don't recall that.

5 Q. Do you recall if it was 20?14 or 20?15?

6 A. 2013 or '14.

7 Q. When did you first start working with
8 Optima on any project?

9 A. 2012, 2013, in that range.

10 Q. And what work did Optima do for Milestone
11 Bath Products at that time?

12 A. Research and development on the ability to
13 print patterns onto acrylic sheet and the simulated
14 tile CNC process.

15 Q. Did the printed patterns involve using a
16 CNC machine to remove material?

17 A. No.

18 Q. When did work with Optima on creating a
19 simulated tile pattern using a CNC machine begin?

20 A. Sometime in 2014.

21 Q. Where did the idea to create a simulated
22 tile pattern using a CNC machine come from?

23 A. That came from my work with Mark Domanico.

24 Q. What -- What is the work with Mark
25 Domanico that you're referring to?

1 A. Mark and I often worked on technical
2 projects together. As you know, Mark with Luxury
3 Bath Systems at the time, and myself -- He's very
4 much an idea guy; I'm much -- much more of the
5 engineering, get-it-done guy. So we often
6 collaborated on projects of -- of the -- really the
7 technical nature primarily, although sometimes on
8 software and other things that I had experience
9 with.

10 Q. So did you have -- Strike that. What did
11 you ask Optima to do with respect to simulated tile
12 walls made using a CNC machine?

13 A. We sent them acrylic sheets, we had them
14 groove the sheets in a tile pattern, they printed
15 into the grout lines, they printed ink of different
16 colors, and we experimented with look and feel and
17 -- and fit and finish.

18 Q. When did you send those acrylic sheets to
19 Optima?

20 A. I can't recall an exact date there.

21 Q. Did Optima come up with the idea to use a
22 CNC machine to create simulated grout lines?

23 A. No.

24 Q. What -- Why did you go to Optima to have
25 those sheets made as opposed to doing it yourself?

1 A. The cost of equipment. They already were
2 set up and using that equipment to -- for other
3 customers in other processes that they did, and they
4 had both the CNC machine and a very high-end Swiss
5 printer that -- for the second project we were
6 working -- or sort of -- they were inter- --
7 intermingled or comingled projects, the printing and
8 the grooving. So they had the equipment, simple as
9 that.

10 Q. Have you ever had an employment agreement
11 with either Milestone Bath Products Inc., Milestone
12 Bath Experts Inc. or Bath Solutions Inc.?

13 A. I currently have -- Since my wife sold the
14 shares I currently have a consulting agreement with
15 Milestone Bath Products Inc. But in the years that
16 I was the CEO, no. I was the -- I was the -- I was
17 the -- My wife and I were the owners so there was no
18 need for that.

19 Q. Are you the -- a named inventor on any
20 patents?

21 A. Yes.

22 Q. How many?

23 A. Just one.

24 Q. Do you recall what that patent relates to?

25 A. It relates to a walk-in bathtub and the

1 ability to have a walk-in bathtub that splits apart
2 in two sections so that it fits easily into a home,
3 through the narrow doorways of a home.

4 Q. Are you a named inventor on any patent
5 applications other than the one that eventually
6 became a patent that you just described?

7 A. No.

8 Q. Other than the tub patent that you just
9 mentioned, does Milestone Bath Products Inc. own any
10 other patents?

11 MR. HALVERSON: Objection. Form.

12 A. No.

13 Q. When did you first meet Mark Domanico?

14 A. Approximately 20 years ago.

15 Q. So about 2003?

16 A. In -- In that range. It's been a long
17 time.

18 Q. What were the circumstances in which you
19 met Mr. Domanico?

20 A. I did business with Luxury Bath Systems
21 out of Chicago.

22 Q. What --

23 A. And that -- Oh, sorry. I was just going
24 to, I guess finish --

25 Q. You can finish your answer.

1 A. -- that little bit. And -- And then he
2 was a shareholder of that company and did some work
3 with them.

4 Q. What business did you do with Luxury Bath?

5 A. I imported some of their products and
6 resold them in Canada.

7 Q. And when you say you did it, was that
8 through your companies, either Bath Solutions or
9 Milestone?

10 A. Yeah, it would -- would have been Bath
11 Solutions Inc. in the -- in those days.

12 Q. What -- What products did you import from
13 Luxury Bath?

14 A. Bathtubs, shower pans, acrylic wall
15 systems, some assimilated tile, all the accessories.

16 Q. Do you recall if there were ever any
17 signed agreements in place between either Luxury
18 Bath on one hand, and then either Bath Solutions or
19 either of the Milestone entities on the other hand?

20 A. We were the Canadian distributor and there
21 was a -- a basic buy/sell agreement there.

22 Q. Any other agreements that you recall?

23 A. No.

24 Q. How did you meet Mark Domanico?

25 A. Mark was not in the day-to-day operations

1 of Luxury Bath Systems at the time so it was -- it
2 was some time I had been dealing with Luxury. And I
3 met Mark subsequent to that. And it would have
4 either -- you know, it would have been a -- a
5 company event of some sort. I would have either
6 been in Chicago at the plant there for some business
7 purposes, or it could have been a -- a business
8 social event, a cruise or something like that. But
9 I don't -- I don't recall the exact time but it
10 would have been, you know, within the first two
11 years of meeting the company. I really had not a
12 lot of interaction with Mark in the early years but
13 that's -- in that range around 20 years ago, anyway.

14 Q. Was -- Was there a point where your
15 interaction with Mark became more substantial?

16 A. Yes.

17 Q. When was that?

18 A. Within -- Within a few years of meeting
19 Mark. I -- It -- I got to know him better, and I
20 think by then my reputation was -- was out there,
21 that I was a technical person. So Mark and I would
22 have technical conversations about problems with
23 their products and I was assisting them with, you
24 know, solving some of the issues in their
25 manufacturing plant. My, I guess two things; my

1 engineering background and my manufacturing
2 experience, but also the fact that I had started a
3 bath remodelling company from the ground up. So I
4 understood what it was like to actually do it in the
5 real world, whereas they predominantly were just
6 manufacturing, they didn't have that real world
7 experience. So as my other company, Milestone Bath
8 Experts, was using their product, often there were
9 lots of room for improvement. So I often, you know,
10 fed that back and had discussions with Mark and some
11 of the other people at the business. Yeah, on those
12 things. Mark was not -- Mark was not at the
13 facility most times unless there was a special
14 event. He lived in Florida at the time.

15 Q. Do you know how many times you've met Mark
16 in person?

17 A. I don't know an exact number, but dozens.

18 Q. When was the last time that you met Mark
19 in person?

20 A. September this year.

21 Q. And what did you discuss at that time?

22 A. We discussed this legal issue, the patent
23 legal issue, as well as I visited a company that he
24 works with currently that's in the manufacturing
25 space. So we talked about selling each other --

1 selling product to each other, those type of things.

2 Q. What did you discuss with respect to the
3 legal issue concerning this case?

4 A. The main purpose was to reconnect with
5 Mark. There was a number of years I had not spoke
6 with Mark and that's why reconnecting with him was
7 important to me, and explained the situation,
8 explained certainly my position on the -- on the
9 patent matter; learned a bit from him on some of his
10 recollection. That was the purpose. Had lunch,
11 flew back home.

12 Q. When was the last time you spoke with Mark
13 Domanico prior to September 2023?

14 A. There was several phone calls leading up
15 to that meeting, but prior to that, 2014 or '15.

16 Q. Did you have any communications with Mark
17 Domanico between 20?15 and 20?23?

18 A. Not that I can recall.

19 Q. And what did you hope to accomplish by
20 speaking with Mark about the legal issue in this
21 case?

22 A. I had hoped that he would recall better.
23 On the -- on the phone -- Mark's -- Mark's getting a
24 little advanced in age and I just felt that if we
25 talked about it, and hopefully he recalled more

1 about it. I wanted to learn more about it from his
2 end as well, of what his recollection was, or his
3 perception was. Yeah, so that -- that was -- that
4 was the main purpose; to reconnect with him knowing
5 that this process was -- was moving forward and --

6 MR. REMUS: Take a --

7 MADAM REPORTER: Just pause.

8 MR. REMUS: We can take a break, yeah.

9 (PAUSE)

10 MADAM REPORTER: Continue.

11 BY MR. REMUS:

12 Q. Did you share with Mark your recollection
13 of the development of simulated tile sheets using a
14 CNC machine?

15 A. Very lightly and generally I did, yes.

16 Q. What -- What do you mean by lightly and
17 generally?

18 A. At that point we were just reconnecting,
19 so it wasn't very in-depth of a conversation.

20 Q. Did you -- Did he agree with your
21 recollection of the events regarding simulated tile
22 sheets made using a CNC machine?

23 A. He did not object or argue or contradict
24 any -- any of my recollection. He had some pieces
25 that, you know, were not ever part of my

1 recollection because I wasn't there. He discussed,
2 you know, some discussions with his lawyer and how
3 it -- you know, how he came up with the concept with
4 a nametag, seeing a nametag, and wondered if that
5 could -- could happen. And he told me -- I -- I --
6 I questioned him regarding why he didn't discuss
7 with me that there was -- you know, he intended to
8 patent it or do anything. And he answered that
9 because he didn't -- did not intend to. He -- So
10 that was kind of -- It was -- It was fairly light.
11 Intentionally it was not designed to be any sort of
12 a, you know, confrontational or highly detail-
13 orientated, or it was just really an introductory
14 getting to know each other again. And -- And fifty
15 percent of the visit was really into, you know,
16 future -- it's not his business but he had --
17 introduced me to a friend of his that -- that we may
18 do some business with, so --

19 Q. In your experience working with Mr.
20 Domanico have you found to -- him to be an honest
21 person?

22 A. No.

23 Q. In what way?

24 A. He's lied to me.

25 Q. When?

1 A. Well, when we were the Canadian
2 distributor and he sold product around my company,
3 and sat at my desk in Belleville at my office, and
4 lied that it didn't happen until I showed him all
5 the Customs documents that were sent to my company
6 in error that proved it.

7 Q. What company was he selling to around you?

8 A. It was a company in Montreal area. I
9 think they were called Southshore something but I
10 can't remember their exact name now.

11 MR. REMUS: Did you -- Let's just do this.

12 Can we mark that as Exhibit 1?

13 Oh, I'm sorry, do you have stickers?

14 MADAM REPORTER: Yes, here, yes. It'll take a
15 second.

16 MR. REMUS: That's fine.

17 MADAM REPORTER: Do you have a preference?

18 MR. REMUS: No, lower right's fine.

19 (Whereupon J. Whitley Exhibit No. 1 was marked)

20 BY MR. REMUS:

21 Q. Mr. Whitley, I'm handing you a copy of a
22 document that we've marked as Exhibit 1. This is
23 U.S. Patent 10,144,243. Have you seen this patent
24 before?

25 A. I have.

1 Q. And you recognize this as the patent that
2 is at issue in this case between BCI and Milestone,
3 correct?

4 A. Yes.

5 Q. And this is the patent on which you
6 believe you are a -- or should be a named inventor?

7 A. Correct.

8 Q. Did you -- When you spoke to Mr. Domanico
9 did you share with him your belief that you thought
10 you should be a named inventor on this patent?

11 A. Yes.

12 Q. And what was his response?

13 A. I think his response was that he didn't
14 know.

15 Q. Did you ask him to support your claim of
16 inventorship for this 243 patent?

17 A. Not directly, no.

18 Q. How many conversations have you had with
19 Mr. Domanico about this lawsuit?

20 A. Approximately ten.

21 Q. And the first one was in September 2023?

22 A. No, it was earlier than that. We had some
23 discussions, some phone discussion, prior to my in-
24 person visit.

25 Q. Okay. How many -- Has there only been one

1 in-person meeting to discuss this lawsuit with Mark?

2 A. Yes.

3 Q. Okay. So the other approximately ten
4 discussions were all by phone?

5 A. Correct.

6 Q. How many telephone discussions did you
7 have before your in-person meeting with Mark?

8 A. I -- I can't recall an exact number. If
9 you want me to take a stab at it I will but I -- I
10 don't remember an exact number.

11 Q. Do you recall speaking with him by phone
12 after your meeting with him in person?

13 A. I have spoke with him after the -- that
14 in-person meeting.

15 Q. When was your most recent conversation
16 with Mark about this lawsuit?

17 A. Last Wednesday afternoon.

18 Q. Was that after his deposition?

19 A. Yes.

20 Q. Okay. What did you discuss at that time?

21 A. He called me. He asked me about
22 production issues with his friend's business that --
23 No- -- Nothing to do with the patent issue. And the
24 -- It was a short call. It was only two -- two or
25 three minutes. At the end of the call he did bring

1 up the patent issue and said he hoped it could be
2 resolved soon and was hoping that BCI would work
3 with us to settle. But there was not really a di-
4 -- what his -- his statement about that; it really
5 wasn't a back-and-forth discussion on that.

6 Q. On that phone call after his deposition
7 did you discuss at all your claim that you should be
8 a named inventor on the 243 patent?

9 A. No.

10 Q. Have you communicated with Mr. Domanico
11 via email concerning this lawsuit?

12 A. There -- There would be some basic setting
13 up the meeting in September and things like that.
14 Mark is not much for email, or texting for that
15 matter.

16 Q. Do -- Do you recall any substantive
17 communications with Mark about this lawsuit via
18 email other than just setting up meetings?

19 A. No.

20 Q. Did you prepare a Declaration that you
21 wanted Mark Domanico to sign in connection with this
22 case?

23 A. We -- Mark and I had a meeting, a phone
24 meeting, a long one, over an hour long, where we
25 decided that we would then -- you know, in much more

1 detail than any of our other conversations,
2 including the in-person one -- we didn't really get
3 into any detail. We decided to -- to share with
4 each other our more detailed recollections so we did
5 set up a -- a phone call. I believe it was on a
6 Sunday, and we both took turns at sharing our -- our
7 recollection of the events surrounding the -- the
8 grooving and the CNC project. And it was following
9 that -- Knowing -- Knowing -- Knowing Mark, I did
10 type up my own as well as kind of recanted (sic)
11 that -- that long phone meeting back to him and
12 asked him to verify if that was his understanding of
13 the -- what he had just spoke about the few days
14 before that.

15 Q. That one-hour phone call that you're
16 describing, do you recall if that was before or
17 after the in-person meeting?

18 A. I believe it was after.

19 Q. And you made a comment about how after
20 your discussion, the one-hour discussion with Mark,
21 you recanted (sic) the -- your recollection of
22 events and you -- you said something about ?knowing
23 Mark?. What -- What were you referring to when you
24 said knowing Mark and that's why you did that?

25 A. Well, I'm a little hesitant to -- I'm not

1 here to, you know, be negative about Mark but he's
2 not one to necessarily follow through with things
3 even if he promises to do it. Knowing his -- a
4 little bit of his age and the situation, he's -- he
5 is struggling with cancer and going through
6 treatments, so I -- I guess as encouragement to
7 actually get something done I was trying to help
8 him. Be -- Be the secretary of it, I guess is maybe
9 the -- the better way to say it.

10 Q. And is that when you drafted a Declaration
11 for Mark Domanico to sign?

12 A. I -- Yeah, I don't know if it was in the
13 form of a Declaration per se at that point, but I
14 just like, you know, it'd be fair to try to recant
15 (sic) his conversation from that call.

16 Q. Mr. Whitley, I'm going to hand you what
17 we've marked as Exhibit 2, which is titled
18 Declaration of Mark Domanico.

19 (Whereupon J. Whitley Exhibit No. 2 was marked)

20 Have you seen this Declaration before?

21 A. I don't know. This is not a signed
22 Declaration. Is this his actual Declaration or
23 something different?

24 Q. I -- I agree with you that it's not a
25 signed Declaration.

1 A. Is this his formal Declaration --

2 Q. I --

3 A. -- in the end --

4 Q. I am not aware --

5 A. -- or is this --

6 Q. I'm not aware of a formal Declaration. If
7 you're aware of one --

8 A. Okay.

9 Q. -- we can consider that one too. Are you
10 -- Are you -- Let me ask you this. Are you aware of
11 any signed Declarations from Mr. Domanico?

12 A. I'm not.

13 Q. So Exhibit 2, have you seen this
14 Declaration before?

15 A. I can't answer that without taking some
16 time to read through it, and I don't know where this
17 has come from, so --

18 Q. Do you recog- --

19 A. Can you -- Can you help me with where this
20 has come from? Then I can probably answer it more
21 accurately.

22 Q. Is this a document that you created?

23 A. No.

24 Q. Have you -- And -- And if you need to take
25 time to read the Declaration you can certainly do

1 that. Have you ever seen this Declaration before?

2 A. I -- I don't know offhand.

3 Q. Okay. Do you need time to review the
4 Declaration so you can answer that question?

5 A. Well, the problem with the document is I
6 don't know if anything's been changed or modified or
7 -- I -- I don't know. It looks similar to -- It
8 looks similar to some of the draft. I would not
9 have drafted the BCI Acrylic Inc. and those kind of
10 things, so -- on, on there. But the rest of it
11 looks like -- It does look like it's the result of
12 that hour-long phone conversation.

13 Q. And does this look like something that you
14 prepared?

15 A. Not the entire document but certainly
16 portions of it.

17 Q. What portions did you prepare?

18 A. The text, you know, the -- the -- the
19 bullet-points pieces. Certainly not the -- the
20 header and the case number and those things. I did
21 not apply those to it.

22 Q. And I -- I'm not seeing any bullet points.
23 I just want to clarify. Are you referring to --

24 A. Well, one, two --

25 Q. -- the number --

1 A. Yes, the numbered --

2 Q. The numbered paragraphs?

3 A. Yes.

4 Q. Okay. So the numbered paragraphs are your
5 creation?

6 A. Yeah, I'm not sure.

7 MR. HALVERSON: Objection. Form.

8 A. I'm not sure if it's been modified at this
9 glance, but it looks similar.

10 Q. When did you prepare this Declaration?

11 MR. HALVERSON: Objection. Form.

12 A. Very shortly after the phone call. So
13 that would have been -- I'm going to say it was
14 October 20?23.

15 Q. Did you send this Declaration to Mr.
16 Domanico?

17 A. Yes.

18 Q. Did you send it to him by email?

19 A. I believe so.

20 Q. Did you send -- Do you recall if you sent
21 multiple versions of this Declaration to Mr.
22 Domanico?

23 A. I do not believe I sent multiple versions.
24 I may have resent -- vaguely he was -- couldn't find
25 it or doing something. I may have re-sent it but I

1 don't believe it was multiple versions.

2 Q. Did Mark respond via email to the email
3 where you sent this draft Declaration to him?

4 A. I don't recall if he responded via email.
5 Mark is often one to just phonecall. So it may have
6 been a conversation over the phone that he was going
7 to review it and go from there.

8 Q. Did you -- After you sent this Declaration
9 to Mark did you subsequently discuss the Declaration
10 with him by phone?

11 A. Not in detail of what it contained or
12 anything like that. I believe he's referred to it a
13 few times, that he would, you know, be reviewing it
14 and making, you know, any editing he needed to make
15 and would look at sending it back. But I -- He --
16 If it did come back, it didn't come back to me.

17 Q. To the best of your knowledge has Mr.
18 Domanico ever agreed to sign this Declaration?

19 A. Not to my knowledge, but he also has not
20 refused to -- to sign it either. I think he just
21 wasn't sure what to do.

22 MR. REMUS: We've been going for about an hour,
23 why don't we take a short break. We can go off
24 the record.

25 MR. JEWELL: Going off the record. The time is

1 now 15:10 UTC.

2 (OFF THE RECORD)

3 MR. JEWELL: Back on the video record, the time
4 is now 15:18 UTC.

5 BY MR. REMUS:

6 Q. Mr. Whitley, the phone calls and one in-
7 person meeting that you had with Mr. Domanico
8 concerning this litigation, was anybody else
9 involved in those discussions other than you and Mr.
10 Domanico?

11 A. The visit to Chicago, Ian Langdon was
12 there for that meeting as well.

13 Q. For any of the other discussions was there
14 anybody present?

15 A. The hour-long phone meeting, Erik
16 Halverson was on the call as well.

17 Q. Anybody else on that call?

18 A. No.

19 Q. Anybody else present at any of the other
20 discussions you've had with Mr. Domanico about this
21 litigation?

22 A. Yes, a gentleman by the name of Mark Smith
23 who owns the company that Mark is -- Doesn't -- He
24 doesn't work there, he's helping his friend in the
25 -- in the bathroom manufacturing business. He was

1 there for the lunch meeting conversation.

2 Q. For the in-person meeting that Mr. Langdon
3 attended, did he participate at all in the
4 discussions that actually pertained to this case?

5 A. Yes.

6 Q. What did he say?

7 A. Did Mr. Langdon say?

8 Q. Yes.

9 A. I can't -- I can't recall exactly. It
10 might have been more just questions on the details.

11 Q. Was there -- Strike that. Are you
12 currently doing any business with Mr. Domanico?

13 A. No.

14 Q. One of the projects that has been
15 mentioned that you worked on with Mark Domanico is
16 printing simulated marble on acrylic sheets. Do you
17 recall that project?

18 A. Yes.

19 Q. What was the idea behind printing
20 simulated marble on acrylic sheets?

21 MR. HALVERSON: Objection. Form.

22 A. The main purpose was to try a -- a new
23 printing -- not really a new printing process but
24 new for our industry, where we could --? Oh, sorry, I
25 thought I had everything shut off here. There we

1 go. The idea was to be able to print a digital file
2 as opposed to a -- an old-fashioned printing process
3 with rollers, which is gravure process, which would
4 give the advantage being able to literally print
5 anything you can come up with digitally. No -- No
6 different than you would on your computer screen at
7 home and print on an inkjet printer. It would give
8 us the ability to print anything more complicated
9 that the gravure process could not do, as well as
10 being able to print in much smaller volumes.

11 Q. Who came up with that idea?

12 A. I don't recall that.

13 Q. What were your contributions to that
14 project?

15 A. I was printing samples in Canada; Mark was
16 printing samples in -- in the U.S. And the primary
17 challenge of that project -- You know, print -- the
18 printing wasn't the challenge; the challenge was
19 protecting the -- the inks in a -- you know, in a
20 shower situation as you can imagine, that's water
21 and humidity and people scrubbing it. So the -- the
22 primary challenge was protecting the ink and -- so
23 that it would be durable and last 25 or 30 years in
24 a shower environment. That was the challenge we
25 were working on. So I had been testing and trying

1 different lamination methods to try to, you know,
2 protect that ink, and Mark was doing the same on his
3 end, and then we would share the samples and talk
4 about the pros and cons of -- in -- in that case,
5 why it would -- why it was not good enough to go
6 into the real world production. At that point in
7 time that project was not successful.

8 Q. Why wasn't it successful?

9 A. Primarily Duratint air voids under the
10 laminate films. Because everything in our industry
11 is typically high gloss, you know, it's like a speck
12 of dirt on the Ferrari finish. It just stands out
13 like a sore thumb. We were -- just could not find a
14 way to get it to look, you know, 99 out of a hundred
15 percent. We just could not get there at that point
16 in time to -- to find any suitable way. We tried
17 coating, we tried coating it with automotive type
18 clear coats, we tried various laminates, different
19 equipment to -- to do the lamination because that
20 can sometimes make a big difference. We tried
21 laminating under heat and pressure. That project in
22 -- in that form never came to fruition. That one,
23 we -- we worked on that for quite a while.

24 Q. Were you and Mark working on different
25 solutions to that problem of protecting the ink?

1 A. Yes.

2 Q. What solutions were you working on?

3 A. The ones I just suggested. The -- The
4 clear coating with the automotive finish, I had that
5 type of equipment, and the lamination solution as
6 well. I'd gone to multiple companies and run trials
7 and never -- nothing ever came out that I was happy
8 with of -- of that, unfortunately.

9 Q. What solutions was Mark working on for
10 protecting the ink?

11 A. I believe he was laminating, trying
12 different laminators as well.

13 Q. Was there any agreement in place between
14 either you and Mark or your respective companies
15 with respect to this project?

16 A. No.

17 Q. Was there ever any discussion about having
18 an agreement in place?

19 A. No.

20 Q. Do you have any notes or -- or lab
21 notebooks from that time concerning your work on the
22 simulated marble acrylic sheets?

23 A. No. These projects were not complicated
24 enough to -- to -- to have a necessity for those
25 type of things.

1 Q. Did Mark ever send you samples of his
2 efforts to create these simulated marble sheets?

3 A. Yes.

4 Q. Do you recall how many times he did that?

5 A. I -- I think we met multiple times. Some
6 of it's in-person and then some is -- he would just
7 put the samples on our -- If we were buying material
8 and, you know, just normal product to resell, he
9 would just throw it on the shipment and we would --
10 it would get to me that way, in an envelope.

11 Q. And did you send him samples of what you
12 were working on?

13 A. I don't recall like couriering him
14 product, but I do recall at least once he was
15 physically at my facility and we were going over the
16 -- my results. I may have taken -- I may have taken
17 samples in person in -- you know, during a visit to
18 -- to their facility, but I -- I say I may have.
19 But I don't recall shipping anything out to him by
20 courier. It may -- If -- If anything it was in
21 person.

22 Q. Did you have any type of non-disclosure
23 agreement in place with Mr. Domanico or Luxury Bath?

24 A. No.

25 Q. Why not?

1 A. It never -- It was never part of the
2 process. You know, according to, well, certainly my
3 -- my understanding of -- You know, just to use
4 these two projects that we're talking about as an
5 example, you know, there was no intention to -- to
6 patent them at the -- at -- certainly at that time.
7 I was surprised to find out years later that this
8 had in fact happened. Mark knew we manufactured; I
9 certainly knew they manufactured. They were never
10 -- Mark in particular, but even their -- even their
11 company, even the CEO at the time of the company,
12 they were really very open with all their
13 technology. They didn't -- They didn't care if --
14 you know, to protect those kind of things.

15 Q. Well, is the same true for Milestone, that
16 Milestone did not care to protect those things?

17 A. Those particular things, we did not care
18 to protect them. In particular the -- the grooving
19 project. It's somewhat laughable to me that the
20 patent actually got approved because it's, you know,
21 a standard piece of equipment. I would have never
22 imagined that that was patentable. Mark said the
23 same thing to me. But that's -- In the end here we
24 are, so -- At that point in time it didn't feel like
25 anything was there to protect. Things like the

1 walk-in bathtub that -- that I was successful
2 getting a patent on, that was different. We knew
3 that was very special. Nobody else had done
4 anything even similar and, you know, I protected
5 that, did not share that with anybody. Yeah, it --
6 That would -- So I knew what was -- needed to be
7 protected and not.

8 I think Luxury Bath as well as -- as
9 Milestone Bath Products, that's not really the --
10 you know, the -- the normal process for us to patent
11 something that's new, that's just sort of us -- you
12 know, small evolutions. So that's just not normal
13 process for us.

14 Q. In -- In your opinion is there anything
15 inventive or patentable about the 243 patent?

16 A. Are you asking me if -- if this patent
17 should have been -- or, sorry, this -- this patent
18 should have been approved?

19 Q. Yes.

20 A. Are you asking me that? I -- That's
21 beyond my expertise at that point in time. I can
22 tell you that neither Mark nor myself believed it
23 was patentable during that time. We had no
24 discussions at all regarding the possibility of
25 patenting it or being a -- you know, anything of any

1 significance.

2 Q. Okay. Do you think there's anything
3 inventive or patentable that's described in that
4 patent, in the 243 patent?

5 A. Well, I think the answer that it's been
6 approved would be my -- that I would have to say at
7 this point in time it was approved. We have --
8 obviously have dispute over that.

9 Q. Okay. Do -- Do you agree that it should
10 have been approved?

11 A. I do not agree that it should have been
12 approved.

13 Q. Why?

14 A. Because there's a -- It's just a -- a
15 natural evolution with an existing piece of
16 equipment. It's just such a simple -- nothing --
17 there's really no technology involved here.

18 Q. Is it your opinion that at the time that
19 application was filed that all of the concepts
20 described in there were well-known concepts?

21 MR. HALVERSON: Objection. Form. It calls for
22 a legal conclusion.

23 A. I would say that certainly the majority of
24 that is commonly available, equipment and processes.

25 Q. Is -- Is there anything that was not

1 commonly available or well known?

2 MR. HALVERSON: Same objection.

3 A. I don't believe that there is anything
4 that's uncommon about that.

5 Q. Did you have a non-disclosure agreement in
6 place with Optima?

7 A. Yes.

8 Q. Why is it that you had a non-disclosure
9 agreement in place with Optima but not with Luxury
10 Bath?

11 A. Because they had the equipment to produce
12 pieces like this and the -- I was worried that they
13 would become a com- -- a competitor. It wasn't
14 about a -- a patent issue, it was about them buying
15 acrylic sheet from a supplier and competing against
16 us, selling to their customer base. Even though
17 they were not in our industry they were doing a --
18 another project that they were, you know, creating a
19 sales channel high-end product, selling to
20 architects and people like that. So I was worried
21 that they would, you know, duplicate my business,
22 become a competitor.

23 Q. Did you not have that same concern with
24 respect to Luxury Bath?

25 A. No. Luxury Bath, you know, at that point

1 in time we considered a, you know, a frie- -- very
2 friendly competitor; you know, partner, if you want
3 to use that term. You know, they produced things
4 that we needed. You know, it was a very friendly
5 relationship. We had, you know, lots of things
6 going on there. You know, Mark -- Mark has stayed
7 in my personal home with my family, met my family.
8 I've been to his home in Florida, for example. So
9 just a very different relationship. It wasn't
10 really threatening. You know, if we developed
11 something and gave it to them, it didn't matter. We
12 obviously used their products. You know, it -- it
13 was just a very different relationship.

14 Q. What -- When was that, that you stayed in
15 each other's homes?

16 A. Oh, I did not -- I visited his home, I
17 didn't stay there. Went for a barbeque with my
18 children and my wife during a trip to Florida. His
19 home was in Orlando, so it was certainly -- that's
20 where I was at the time, with my children. But we
21 went over for a barbeque with his wife, and met his
22 mother-in-law and his mother, and had a nice
23 barbeque in his -- around his pool. Geez, I can't
24 remember when that was. I'm -- I'm going to say it
25 was likely in the 2000 and -- well, maybe I can

1 think of how old my children are in there. I'm
2 going to say that was -- that was 15, 16 years ago I
3 visited him at his home. I'm just going by my
4 youngest daughter, that I'm not picturing that she
5 was there, just my older two. Went out for dinner
6 another time in Florida with Mark's wife Joanne, and
7 -- and my wife. And then he was here -- It was
8 later on. I'm going to say that was 2012. It might
9 even have been into the winter of 2013 that he
10 stayed at my home. We have a guest suite at my home
11 and he came and stayed, and -- which is not
12 something I offer up easily.

13 Q. When was the first time you were aware of
14 the idea of forming simulated acrylic tile sheets
15 using a CNC machine?

16 A. Early 2013.

17 Q. And how did you become aware of that idea?

18 A. Mark had the concept to -- to try that.
19 We bounced some ideas back and forth on how that
20 would happen.

21 Q. What ideas were bounced back and forth?

22 A. Just the -- the basic idea. You know, the
23 name tag example. What if we tried this, what would
24 that mean?

25 Q. What -- What types of things were you --

1 you know, trying, what types of things?

2 A. The big one being that he did not have to
3 make traditional vacuum-forming tooling, just a
4 computer program; you could change it up quickly,
5 you know, changeovers. It would reduce all your --
6 all your setup time of molds. So we talked about
7 those kind of things.

8 Q. Do you recall whether or not you made any
9 suggestions to him for his idea?

10 A. I think at that point we discussed that we
11 would, you know, do some -- do some rudimentary
12 tests and see what it looked like.

13 Q. Do you recall what month in 20?13 this
14 was?

15 A. I do not recall the -- the month. Too
16 long ago now.

17 Q. What was the next step in the process
18 after the initial discussion?

19 A. I believe some time went by. One of the
20 -- One of the things about Mark is he usually has a
21 hundred things on the go and the -- I think there
22 was some time went by. And then -- And then we met
23 in person and looked at some of the first initial
24 samples which were -- were not very attractive. And
25 that would have been -- Sorry, that would have been

1 a little bit later on in -- in the process.

2 Q. Do you recall when that in-person meeting
3 would have been?

4 A. I believe it was the winter of either --
5 either late 2013 or winter 2014.

6 Q. Do you know where that meeting was?

7 A. I believe at my facility here in -- in
8 Belleville.

9 Q. So Mark travelled to your facility here in
10 -- in Belleville and brought samples with him?

11 A. I believe so.

12 Q. Do you recall how many samples?

13 A. It would have been a -- a stack of pieces
14 of acrylic, it would not have been -- nothing full-
15 size, just some smaller pieces.

16 Q. And what do you recall about those
17 samples?

18 A. That they were not saleable, they were
19 rough around the edges, and I mean that literally.

20 Q. Do they have sharp edges?

21 A. Yes.

22 Q. And those were the edges where the grout
23 lines are formed?

24 A. Yes.

25 Q. You know, what did you discuss at this in-

1 person meeting at your facility where Mark brought
2 these samples with him?

3 A. Next steps to try to get a saleable
4 product.

5 Q. What were those next steps?

6 A. There may have been other things, but the
7 big ones -- certainly by, you know, some of the
8 documents and those things -- the big things were
9 the -- the depth of the cut, using a -- a bit that
10 would reduce the sharp edge.

11 Q. Who made those suggestions?

12 A. I did.

13 Q. When did you make those suggestions?

14 A. During that visit. We had the discussion
15 in that winter. So that either -- You know, just
16 based upon the weather, I remember the snow. So it
17 would have been, you know, December through
18 February. Rarely does it snow here in March. It
19 could have been early March at the -- at the latest.
20 After that we really don't get much snow here. But
21 we -- we had the discussion in person, and then
22 nothing happened and I kind of poked him again later
23 about it because I thought it was kind of a cool
24 project to do.

25 Q. What was his response to those suggestions

1 that you made about the -- the depth of the cut and
2 using a different bit to remove the sharp edges?

3 A. During the -- the in-person meeting?

4 Q. Yes.

5 A. He suggested he would give it a try.

6 Q. Anything else discussed about those two
7 ideas?

8 A. Not that I recall. You know, the process
9 itself at that -- you know, is again not that
10 complicated. So it was really -- That was kind of
11 the next evolution that I thought we should give a
12 try.

13 Q. Why did you want to reduce the depth of
14 the cut?

15 A. Visually it did not look realistic, but
16 that also was a factor of the sharp edges.

17 Q. How did the sharp edges relate to the
18 depth of the cut?

19 A. Basically your finger, when it goes --
20 when it goes down deeper it exposes more of the edge
21 on your -- on your skin. You know, if you look at
22 a, you know, traditional tile job, the grout's not
23 that deep when the -- when the tile-setter sets it
24 in. So it was really a matter of trying get that --
25 the fit and finish and that sharpness out of the --

1 out of the grooving process.

2 Q. Do real grout lines have rounded edges?

3 A. Typically. It depends on the tile, it
4 depends on the tile setter, how they finish it.
5 That's a craftsman issue at that point. But it's --
6 Typically they're -- they're very soft and rounded.

7 Q. What was the next step in the process that
8 you recall with respect to this project, dealing
9 with simulated tile walls made using a CNC machine?

10 MR. HALVERSON: Objection. Form.

11 A. I -- I believe some time went by with --
12 where nothing happened. And then I took it upon
13 myself to do some research and kind of followed up
14 with Mark again.

15 Q. Do you recall when you followed up with
16 him?

17 A. That was I believe November of 2014.

18 Q. What was the research that you did?

19 A. Online research trying to find a -- a bit
20 that would produce the right radius to try to remove
21 the sharp edge.

22 Q. And at that time were such bits for CNC
23 machines well known?

24 A. Pretty well known, yeah. You know,
25 there's catalogues of these things out there.

1 Q. And when you followed up with Mark in
2 November 2015 what happened at that time?

3 A. I think that triggered him to do some more
4 testing and he had taken my advice and sourced some
5 -- a rounder bit, something with more of a radius on
6 it. I don't believe he had tried it at that point
7 in time.

8 Q. When you followed up with him was that by
9 email or phone?

10 A. That was by email.

11 Q. Do you know when Mark ordered that rounded
12 bit?

13 A. I -- I certainly don't know a date.
14 Sometime between the -- the in-person meeting where
15 I suggested that and -- and the November email. I
16 would assume it was closer to November because parts
17 like that are, you know, a week or two to -- when
18 you or -- or even when you order something special
19 they don't take that long. They're not -- They're
20 not custom made, they're just a supply chain issue.

21 Q. What was the next step in the process
22 after you followed up with Mark in November 2015?

23 A. Hmm. I don't recall the next sort of
24 communication I had with Mark on that. Luxury Bath
25 Systems was in some -- some business crisis stuff so

1 I think Mark kind of -- wasn't -- wasn't dealing
2 with a lot of research and development stuff for a
3 while.

4 Q. Do you recall when you next heard from
5 Mark regarding this project after the November 20th 2015
6 meeting?

7 MR. HALVERSON: Objection. Form.

8 A. I don't recall.

9 Q. Regardless of timing, do you recall what
10 the next step was in the project?

11 A. I don't recall specifically. I -- I guess
12 I would say that the -- the next set of trials with
13 the shallow depth and the bit. I -- I believe the
14 next step, or close to the next step anyway, would
15 have been success and we both took the product to
16 market.

17 Q. Do you recall when, or -- Mark brought
18 samples with him during his visit to -- to
19 Belleville. Did he subsequently send you additional
20 samples?

21 A. I would have had some samples at some
22 point there. I don't recall what the timing of that
23 would be, if that was into 2015.

24 Q. Do you recall how many times Mark showed
25 you samples of his simulated tile walls?

1 A. At least three times.

2 Q. What are the three times that you
3 remember?

4 A. The time in the -- in the winter of
5 2013/'14, and then later in 2014, and then I'm --
6 I'm not sure on the timing but I'm assuming early
7 2015 there was some other samples.

8 Q. What were the samples you recall in late
9 2014?

10 A. They were still not -- not a saleable
11 product.

12 Q. Why not?

13 A. The sharpness, visual did not -- It looked
14 -- It looked very manufactured, it did not look
15 natural.

16 Q. Were you -- Now at the time you were
17 talking to Mark were you also talking to Optima
18 about them using a CNC machine to make simulated
19 tile walls?

20 A. Yes.

21 Q. Was Mark aware that you were talking to
22 Optima?

23 A. Yes.

24 Q. Did Mark care that you were talking to
25 Optima?

1 A. No.

2 Q. Did you share any ideas that you may have
3 learned from Optima with Mark and vice versa of --
4 share ideas from Mark with Optima?

5 MR. HALVERSON: Objection. Form.

6 A. Optima wasn't really part of the research
7 and development, they were just the machine
8 operator. We just -- We just said ?Do this. Run
9 samples?. We got the samples and evaluated them.
10 So they were not really on the research and
11 development side. So other than sharing our results
12 of here's what we tried, here's what we got, it
13 wasn't so much -- Yeah, the -- the -- It wasn't
14 Optima learning something, sharing it with me and
15 then Mark. It was me evaluating the samples based
16 upon a trial parameter that we had set in place with
17 Optima.

18 Q. Did -- Why did you have Optima make
19 samples in addition to the samples that Mark was
20 already making?

21 A. Probably just to keep the project moving.
22 Mark's MO is well-known, to -- to not get a lot done
23 so, you know, we had agreed that trying different --
24 different places and different things and different
25 methodologies, you're kind of working on it in

1 parallel and then sharing the samples. So -- But
2 from my standpoint, just because I didn't trust that
3 Mark would actually see anything through, frankly.

4 Q. Am -- Am I correct that Optima ended up
5 manufacturing simulated tile sheets using a CNC
6 machine that Milestone ended up sending -- selling
7 commercially?

8 MR. HALVERSON: Objection. Form.

9 A. Yes, they -- they ended up making final
10 product for us, yes.

11 Q. Does Optima still manufacture those
12 simulated tile sheets for Milestone?

13 A. No.

14 Q. When did that stop?

15 A. 2016, 2017.

16 Q. Why did it stop?

17 A. They had an equipment breakdown and the
18 cost to repair the particular piece of equipment was
19 extraordinary. Fifty or \$60,000 for some special
20 control pieces that I don't understand what exactly
21 that was. And they apologized and said that the
22 volume was just not high enough. You know, even
23 today we don't sell a lot of this type of project,
24 but the volume was too low for them to justify the
25 expense, and we moved the project to a -- a Toronto-

1 based company and then had some -- had some issues
2 with that company. We ended up -- By then we -- we
3 were stable enough, we knew the prod- -- the product
4 would sell. We bought our own machine at that point
5 in time.

6 Q. Did Milestone Bath Products ever buy
7 simulated tile sheets from -- excuse me -- Luxury
8 Bath?

9 A. Early on we may have bought some. It'd be
10 very few, but we may have bought some.

11 Q. And that was the extent of its purchases,
12 that -- that limited amount at the beginning?

13 A. Yeah, if anything. I just said we may
14 have but I don't -- I don't recall specifically, but
15 we may have.

16 Q. How did the --

17 A. I don't -- Actually, I'm going to correct
18 myself. I don't -- I don't know if that's correct,
19 because my understanding is that Milestone took the
20 -- took that product to market before Luxury did, so
21 that may not -- that may not be correct. So, sorry
22 about that, but --

23 Q. Do you know when Milestone took its
24 product to market?

25 A. I know there's a document from the Wayback

1 machine, showing it posted on our -- on our public
2 website. It would have been before that. We're not
3 really website-technical people on staff -- At least
4 at that point we weren't. We are now. So it could
5 have been sometime later that we actually posted it
6 on our public website.

7 Q. Do you --

8 A. But I would -- I would think it was --
9 Sorry, can I see that one email document? It's got
10 a date on it that might -- the one with the router
11 bit on it. That -- Was that November 2014?

12 Q. We can -- We'll get to that a little bit
13 later.

14 A. Okay, so you don't want me to answer the
15 question then?

16 Q. I can -- You can answer to the best of
17 your ability now.

18 A. I just need the document to refresh my
19 memory on the -- on the date, that's all.

20 Q. Okay. Do you recall when Milestone would
21 have posted its products to its website?

22 A. I would refer to the document on that,
23 from the Wayback machine.

24 Q. How did the project as it relates to your
25 working relationship with Mark end? You know, is

1 there a point in time where you stopped talking
2 about making simulated acrylic tile walls using a
3 CNC machine?

4 MR. HALVERSON: Objection. Form. Compound
5 question.

6 A. Sorry, can you repeat the question?

7 Q. Sure. Maybe I can ask a better question.
8 When was the last discussion you had with Mark
9 Domanico concerning the use of a CNC machine to make
10 simulated tile acrylic walls?

11 A. Ignoring the -- the 2023 conversations?

12 Q. Yes.

13 A. I don't recall.

14 Q. Was there a point in time where Mark sent
15 you samples that were acceptable to you?

16 A. I don't recall if it was Mark's samples or
17 my samples that were first deemed acceptable. I
18 don't recall that.

19 Q. Do you recall ever telling Mark that
20 Milestone would not be moving forward with Luxury
21 Bath for those products?

22 MR. HALVERSON: Objection. Form.

23 A. I don't believe there was a conversation
24 regarding that specifically but the -- Mark already
25 knew that we would produce that in Canada.

1 Q. When did you first become aware of the 243
2 patent, which we marked as Exhibit 1?

3 A. When I received the initial Cease and
4 Desist letter from BCI. I had no idea until then.

5 Q. You don't recall Mark ever mentioning the
6 243 patent to you prior to that letter, is that
7 correct?

8 A. He had never mentioned it to me.

9 Q. Do you have any notes or lab notebooks or
10 drawings that relate to your work on creating
11 simulated tile sheets using a CNC machine?

12 MR. HALVERSON: Objection. Form. Asked and
13 answered.

14 A. I don't believe so.

15 Q. Do you know what the depth of a real grout
16 line typically is?

17 MR. HALVERSON: Objection. Form. Asked and
18 answered.

19 Q. He -- He objected. You can still answer
20 the question.

21 A. Oh okay, I'm sorry. I was --

22 Q. Sorry, I didn't realize you were --

23 A. I wasn't -- No, I was -- I thought I
24 wasn't supposed to answer. So the question was do I
25 have any idea what the depth of a real tile, natural

1 tile, porcelain tile, whatever, grout line is?

2 Q. Correct.

3 A. It varies. It's a cust- -- It's a -- It's
4 a craftsman thing that the tile setter would decide
5 depending on the tile, and his tool that he used,
6 and how he prefers to finish it.

7 Q. Do you know what the range is?

8 A. I do not.

9 Q. Were router bits for forming rounded edges
10 well known in 2014?

11 MR. HALVERSON: Same objection.

12 A. Rounded router bits were definitely
13 available in that time range.

14 Q. Mr. Whitley, I'm going to hand you what
15 we've marked as Exhibit 3, which is a document
16 titled Declaration of Jeffrey Whitley.

17 (Whereupon J. Whitley Exhibit No. 3 was marked)

18 Do you recall seeing this document before?

19 A. Yes.

20 Q. And if we go to page four of the document
21 there's a signature. Is that your signature?

22 A. Yes.

23 Q. Did you prepare this document?

24 A. Substantially, yes.

25 Q. What do you mean by substantially?

1 A. I reviewed it with my counsel.

2 Q. Did you prepare it?

3 A. Yes.

4 Q. When did you prepare it?

5 A. September/October 2023, in that range.

6 Q. Do you recall how long you -- how much
7 time you spent preparing this Declaration?

8 A. I type fast, so I don't know, a couple of
9 -- probably the first draft, an hour.

10 Q. And were there multiple drafts?

11 A. Yes.

12 Q. Before you signed this Declaration did you
13 read it carefully?

14 A. Yes.

15 Q. And is everything in this Declaration 100
16 percent correct and accurate?

17 A. Yes.

18 Q. In Paragraph 2 you indicate that you began
19 working with a company called Luxury Bath as the
20 exclusive Canadian distributor for certain products
21 that Luxury Bath was making. Do you recall what
22 those projects were?

23 A. Yeah, I believe I answered previously.
24 But it is, you know, bathtubs, shower pans, the bath
25 and shower wall systems, the acrylic systems and the

1 accessories to go with that.

2 Q. In Paragraph 3 you say that both you and
3 Milestone engaged Optima. What did you mean by
4 Milestone and yourself?

5 A. Well --

6 Q. What I'm trying to get at, was the
7 relationship with you or was it with Milestone?

8 A. It was --

9 MR. HALVERSON: Objection. Form.

10 A. It was ? Well, both, in a way. I had --
11 You know, I was the CEO at the time, of the
12 corporation.

13 Q. You did not engage Optima in your personal
14 capacity, did you?

15 A. No.

16 Q. In Paragraph 3 you refer to an agreement
17 with Optima that you attached as Exhibit 1 to your
18 Declaration.

19 A. M'hm.

20 Q. Which is a document titled Non-
21 Disclosure/Non-Compete Agreement. Do you recall any
22 other agreements between Optima and Milestone Bath
23 Products Inc., other than this Non-Disclosure/Non-
24 Compete Agreement?

25 A. No.

1 Q. In Paragraph 4 you state that "During this
2 collaboration with Optima I began developing a
3 process for creating acrylic shower walls?". Do you
4 see that there?

5 A. Yes.

6 Q. What is the process you began developing
7 at that time?

8 A. Well, we had sent them -- we had sent them
9 acrylic sheets, they did up a -- a quick program,
10 and we did our trials to groove the grout line
11 patterns.

12 Q. And was -- was this the process that Mr.
13 Domanico had described for you?

14 A. Yes, this is the -- the same project that
15 Mark and I were working on to try to create this
16 different tile pattern.

17 Q. And -- And what did you contribute to
18 developing a process for creating acrylic shower
19 walls?

20 A. Can you clarify -- excuse me -- Can you
21 clarify the question? You just said acrylic shower
22 walls. All -- All acrylic shower walls or --

23 Q. No.

24 A. -- these particular shower walls?

25 Q. These -- The -- The shower walls that are

1 the subject of your Paragraph 4.

2 A. Well, I provided the bit and the depth,
3 the patterns, like the -- the actual style and
4 design.

5 Q. Anything else?

6 A. That's -- that's what I can recall. That
7 were the main components anyway.

8 Q. And in the very last sentence of Paragraph
9 4 you state that "The process provided Milestone's
10 customers a cost-effective shower wall?". But why is
11 it that that process resulted in a cost-effective
12 wall?

13 A. Just that it took a regular -- It -- It
14 was a -- in line with the pricing model for other
15 products. There's -- You know, it was saleable, it
16 wasn't triple the price or -- it was in the same
17 price range as all the other products that we sold.

18 Q. In the first sentence when you say you
19 began developing this process, what do you mean that
20 you began at that time?

21 A. Well, the process up 'til this point
22 wasn't -- wasn't saleable. It was -- you know, it
23 was -- and we talked about it, it was too rough
24 around the edges, so I began my own work to develop
25 the finished product at this point.

1 Q. When did that begin?

2 A. Sometime in 2014. I can't recall an exact
3 -- exact time.

4 Q. Was there a point of contact at Optima who
5 you worked with?

6 A. Primarily the original owner.

7 Q. What was his name?

8 A. Gilles Chartrand, a French name.

9 Q. Any other people at Optima that you worked
10 with on this project?

11 A. He was the primary as the owner, and that
12 -- that's who I recall. At least the vast majority
13 of the conversations all went through him, and then
14 he would have communicated down to his team.

15 Q. Also in Paragraph 4 you refer to a -- a
16 realistic-looking simulated tile pattern. What --
17 What did you mean by that?

18 A. Realistic means it looks similar to tile
19 that -- that a tile setter would set. It means the
20 fit and finish of the grout line. It doesn't look
21 mechanical, or it looked -- you know, looks
22 relatively natural. So perhaps a layperson would
23 look at it and -- and believe it's -- it's real
24 tile.

25 Q. In Paragraph 5 you state that you

1 regularly collaborated with Mr. Domanico on
2 technical advances in the bathtub tile space. What
3 -- What do you mean by regularly collaborated?

4 A. Just when they would have technical
5 issues. Sometimes I would bring the technical --
6 the problem to them and often they were a little
7 lost on how to -- how to correct it or how to fix
8 it. So I regularly collaborated with different
9 ideas.

10 They had -- We talked about, you know,
11 there's this product, the patent issue one. We
12 talked about the printing, on sheets. There was
13 another one where they had a bright idea to pour
14 structural foam in between -- I'm not sure if you
15 know what a tub liner is. That's where a -- a shell
16 goes on top of an old worn out tub. And they had a,
17 you know, idea to -- to pour a structural foam down,
18 but it was a disaster. It caused a lot of failures,
19 things like that.

20 So, often I would talk with Mark of like
21 the -- the problem, here are some things to try to
22 solve that; this is what's not working, this is why
23 I think they're failing, those kind of things. And
24 the end result of that was they pulled it off the
25 market. But, you know, those -- those type of

1 things.

2 I also spoke with Mark, but more the CEO,
3 but certainly Mark I spoke with as well about my
4 technology, my walk-in bathtub that I was trying to
5 get -- you know, them to purchase them. I was -- I
6 was to market on that product, so I was hoping they
7 would buy that product from me. Mark was amazed at
8 the technology of that tub and how that happened, so
9 we would talk about those kind of things as well.

10 I developed some very sophisticated
11 software, best in the industry, and had lots of
12 conversations about what that would do if they
13 implemented that software into their business. They
14 had a lot of problems and ending in the -- the
15 business being dissolved in the end. So they had a
16 lot of challenges that often I was helping him with
17 those things.

18 There was a period of time I ran an
19 advisory committee with their top customers to try
20 to work through some of the problems that the
21 business had and get -- get suggestions from their
22 top 10 people, and I facilitated those events. I'd
23 fly into Chicago and do those kind of things. There
24 was a period of time where I was in Chicago very
25 often.

1 Q. How many of those advisory committee
2 meetings were there?

3 A. I don't recall, it's been too many years.
4 I'm sorry. Multiple for sure, but I don't recall
5 how many.

6 Q. Why -- Why did you do this; what did you
7 get out of it?

8 MR. HALVERSON: Objection. Form.

9 A. Some of -- Some of it was just I like to
10 help people. Some of it was just that I saw the
11 same problems as their -- their other top 10
12 customers. I -- You know, it was in my interest to
13 see them be better -- be a better company, succeed.
14 I didn't really get anything out of it of any
15 significance anyway. They may have sold me
16 something or, you know, given me some free product,
17 or something like that. But nothing of any large
18 significance. But part of it was using my -- my
19 continuous improvement Kaizen background that I
20 hadn't used in -- in some years. So that was kind
21 of fun for me. I really -- I really loved that type
22 of work. But -- Yeah, so I didn't get -- I didn't
23 get a lot out of it, other than a hotel room near
24 the airport and some take-out. But they were always
25 a lot of fun. The CEO that they ended up

1 terminating for -- for fraud and some other things,
2 was a lot of fun, we'll just say. So I had a lot of
3 fun in Chicago, and it was always a good time to go
4 there and do a little trip away. They treated me --
5 They treated me very well and, you know, some of --
6 you know, that was -- that was work stuff, but
7 sometimes they would just have more social get-
8 togethers with some of their top people. I was
9 always invited to those. So they -- they treated
10 really well, you know. So that's -- I -- I was
11 always willing to help them out because I always
12 found it helped me. If there was a problem with a
13 product they were making, if I helped them solve it,
14 when I -- you know, that solved the problem for me,
15 and me reselling it to my customers. So it was --
16 it was a very -- In those years, in the -- it was a
17 very positive working relationship. So I was
18 willing to help them, and they were willing to help
19 me, and we just kind of had this little different
20 relationship beyond -- I think beyond a typical just
21 distributor. We were -- We were a little more
22 ingrained than that.

23 Q. The software that you mentioned, what did
24 that software do?

25 A. It's complete franchise level business

1 software. So everything from call centre and
2 marketing operations, full CRM. The main piece that
3 makes it different is there's a whole in-home sales
4 component with quoting system that the customers --
5 the actual renovators who -- who install the
6 product, their sales people, can go into a
7 customer's home, sell the product. When they sell
8 it, the material order's already created
9 automatically for them. Really tons of mistake-
10 proofing built in. Job scheduling for their
11 installers; follow-ups if there's warranty call-
12 backs; it handles all those kind of things. So
13 basically, it's a -- it's a start-to-finish business
14 system. That's the -- the main reason I was able to
15 franchise the bathroom modelling business.

16 And at that point in time we were only in
17 Canada, so there was some discussions about what we
18 could do with them in the U.S. as well. So not a
19 technical discussion, but more of a business
20 discussion. They were struggling so badly through
21 that, you know, 2014, 2015 period. No, it ended
22 their business, I guess is the ultimate evidence.
23 But they were losing customers and they were -- they
24 were struggling a lot. So we had some discussions
25 on, you know, could my company come in and, you

1 know, leave them just manufacturing and not let them
2 talk with their customers any more, kind of thing.
3 We would handle that.

4 So there was some -- lots of high level
5 business discussions that happened as well.

6 Q. This franchising software that you
7 mentioned, did you offer to sell that to Luxury
8 Bath?

9 A. I don't know if I offered to sell it to
10 them. We talked about the use of it so I'm not sure
11 what that discussion -- if it was licensing or that
12 we would just make a royalty off the customer. So
13 they would never -- they would never own or use the
14 software, we -- we would just set their customers up
15 in our software, so I -- I don't recall. Maybe it
16 was thrown out different ways. Mark was very
17 excited about that, but they -- they never made a
18 decision, so --

19 Q. And the expectation was that you weren't
20 going to just give this to them --

21 A. No.

22 Q. -- you would be compensated --

23 A. Not --

24 Q. -- in some form?

25 A. No, I spent \$2,000,000 on that software;

1 that's a little different game.

2 Q. In -- So going back to your Declaration
3 here, Exhibit 3. In Paragraph 5, in the second
4 sentence you refer ?In the 2014s? -- What did you
5 mean by the 2014s?

6 A. Well, that's in line with the simulated
7 tile project. You know, that sort of '13/'14 period
8 is where this was all -- all happening. And then
9 2015 the project was over, and it was to market. So
10 I -- I just can't recall the -- As you -- As I've
11 already -- As I've already testified, I can't recall
12 the exact date other than sort of winter 2013 and
13 '14, when we began.

14 Q. In Paragraph 7 of your Declaration, you
15 state ?Mr. Domanico and I developed a method of
16 carving a tile pattern into a sheet of acrylic
17 plastic?. Do you see that there?

18 A. Yes.

19 Q. What is the method you're referring to
20 there?

21 A. The CNC method.

22 Q. And what was your contribution to that
23 method?

24 A. My contribution was the bit to make the --
25 to make the tile pattern visually and physically

1 acceptable through the -- the bit and the depth of
2 the bit, and really getting it to a finished goods
3 product.

4 Q. Any other contribution?

5 A. That's the big ones anyway. We may have
6 had some discussions, we probably did have some
7 discussions, you know, on -- on what would -- what
8 -- what size of tiles and, you know, those kind of
9 things. But that's not really -- really pertinent
10 to this discussion.

11 Q. Continuing in Paragraph 7 on to page
12 three, on the second half of Paragraph 7, you say
13 ?Specifically, Mr. Domanico and I met to discuss Mr.
14 Domanico's idea?. Do you see that there?

15 A. M'hm.

16 Q. When was that meeting?

17 A. That was the winter 2013/2014.

18 Q. Do you have any documents or emails or any
19 other evidence to corroborate what was discussed at
20 that meeting?

21 A. Unfortunately no. When I sold the
22 franchising entity in 2013 a -- a multi-step thing
23 happened. We went from a traditional physical
24 server at our location, you know, Microsoft physical
25 server, then we went to Google Drive email, to

1 what's now called Office 365. And I sold the
2 business that was the franchising entity and they
3 ended up with that -- that domain that was all my
4 email, they ended up with my email address. And as
5 I previously testified, there was a -- a Court
6 lawsu- -- there was a lawsuit, and I do not have
7 access to any of those old emails in that time
8 period unfortunately.

9 Q. Is it -- Do you recall what that time is
10 that -- it's kind of cut off from when -- when you
11 have access to emails and when you don't?

12 A. Not -- Not an exact month. I did have
13 access -- I'm going to say it was summer or fall of
14 -- late summer or fall of 2013. That's when
15 everything collapsed and the lawsuit commenced.

16 Q. In your various discussions with Mr.
17 Domanico on the projects that you've referred to,
18 was there ever any discussion about who would have
19 the rights to any of the ideas that you two worked
20 together on?

21 A. No. No discussion on rights. Had there
22 been, I would have honored that.

23 Q. Mr. Whitley, I'm handing you a document
24 that we've marked as Exhibit 4, and it has
25 production numbers in the lower righthand corner:

1 MBP-000005.

2 (Whereupon J. Whitley Exhibit 4 was marked)

3 This is an -- an email thread. Do you recall
4 having seen this email thread before?

5 A. I -- I believe it's an accurate email that
6 went -- went back and forth in 2015. I'm not sure if
7 that's -- Is that the 10th of July 2015 or the --

8 Q. You don't -- It -- It --

9 A. -- or October 7th? I don't know how the --

10 Q. So if you look at the lower --

11 A. Oh, okay.

12 Q. -- emails on the thread --

13 A. There we go, thank you.

14 Q. -- it -- it spells out October.

15 A. I see that, thank you.

16 Q. So this email relates to communications --

17 A. M'hm.

18 Q. -- that you were having with Optima --

19 A. M'hm.

20 Q. -- and specifically -- I'm going to -- I
21 don't speak French, Gilles Chartrand.

22 A. M'hm.

23 Q. And he was your contact at Optima, is that
24 correct?

25 A. Correct.

1 Q. Okay. In the very top email --

2 A. M'hm.

3 Q. -- you refer to ?colored ones are for
4 photos only, not grooving?.

5 A. M'hm.

6 Q. What were you referring to there?

7 A. I think this is unrelated. The -- The
8 colored ones -- So we were in production on
9 grooving, and I think I probably sent something and
10 he scanned it for me. Like an unrelated project.
11 New -- We had like a new color, a new pattern.
12 Like, you know, something looks like this, and he
13 probably ran it through his scanner for me. I don't
14 think it's related to this project.

15 Q. And -- And just to clarify. This email
16 thread we marked as Exhibit 4, does not relate to
17 the use of a CNC machine to make a simulated tile
18 acrylic sheet?

19 A. I -- I think it relates to -- that we sent
20 extra sheets along with the ones for grooving. But
21 the -- the line about the colored ones, that's -- he
22 was taking some -- some high resolution images for
23 me for a -- probably for our website or something
24 unrelated.

25 Q. Okay. How --

1 A. But he was already grooving by then
2 because that's why it specifies not grooving.
3 That's what I believe this means.

4 Q. Okay, let me back up. Is -- Does the
5 grooving relate to simulated grout lines?

6 A. Yes.

7 Q. And does this email thread relate to the
8 use of a CNC machine to make simulated grout lines?

9 A. Yes. That portion, yes.

10 Q. And did you, in the course of looking for
11 documents for this case, did you look for all of the
12 correspondence that you had with Optima concerning
13 the use of a CNC machine to make simulated grout
14 lines?

15 A. I did.

16 Q. Okay. And you produced anything that you
17 found?

18 A. Correct.

19 Q. Do you recall if you found any
20 correspondence with Optima relating to the use of a
21 CNC machine to make simulated grout lines prior to
22 October of 2015?

23 A. I can't recall that.

24 Q. Mr. Whitley, I'm going to hand you a
25 document that we've marked as Exhibit 5, and this is

1 an email thread that bears production number
2 MBP-000003.

3 (Whereupon J. Whitley Exhibit No. 5 was marked)

4 Is this an email that you recall seeing
5 before?

6 A. Yes.

7 Q. Let's start at the bottom of this page and
8 work our -- our way up. So -- Which is the first
9 email chronologically in the thread down at the
10 bottom. The very last line you say ?Hi Gil. How
11 are things going on the project?? Do you know what
12 project you're referring to there?

13 A. This was -- It looks like it was printing
14 the marble patterns, printing the marble patterns on
15 the -- on the sheets, with him doing some laminating
16 trials.

17 Q. And then if we -- As we move up the page,
18 on October 21st, 2015, at 11 -- at 8:57 in that
19 email you refer to grooving. What is the grooving
20 that you are referring to there?

21 A. That would be the -- the CNC cutting of a
22 production -- production order.

23 Q. And if we go to the very top email, where
24 you're referring to the 38-inch wide and 60-inch
25 wide subways, do you see that there?

1 A. Correct.

2 Q. Does that refer to simulated tile sheets
3 made with a CNC machine?

4 A. Yes, the subway part of it, yes.

5 Q. Okay. And when you're referring to --
6 that they're ready to pick up, do you know if those
7 were just samples or were those production sheets?

8 A. This would have been production sheets.

9 Q. And then in the last line of this email
10 you refer to a photoshoot.

11 A. M'hm.

12 Q. Do you know what that photoshoot was?

13 A. Well, I think that verifies these extra
14 sheets that we had sent to -- to be photographed.
15 Un- -- Unrelated to the grooving project. That was
16 relating to the -- the project of printing the --
17 the tile -- or printing the marble patterns or
18 whatever we wanted on the sheets. That -- That
19 project at that point in time never really went
20 anywhere, unfortunately.

21 MR. HALVERSON: If we're going to do another
22 one, is this a good time for a break?

23 MR. REMUS: Yeah, no, that's fine. We can go
24 off the record.

25 MR. JEWELL: Going off the video record at

1 16:29 UTC.

2 (OFF THE RECORD)

3 MR. JEWELL: Back on the video record. The
4 time is now 16:39 UTC.

5 BY MR. REMUS:

6 Q. Mr. Whitley, I'm handing you a document
7 that we've marked as Exhibit 6, and it bears
8 production numbers MBP-000006 through 09.

9 (Whereupon J. Whitley Exhibit No. 6 was marked)

10 This is a -- an email from Jeff Kinkaid
11 dated June 26, 2015. Do you recall having seen this
12 email before?

13 A. Yes.

14 Q. Who is Jeff Kinkaid?

15 A. Jeff Kinkaid worked for Luxury. He was
16 sort of their -- their technical guy.

17 Q. What do you mean by technical guy?

18 A. He did installer training for, you know,
19 the U.S., their customers. If you had a technical
20 issue -- You know, if one of their customers had a
21 technical issue they would typically be routed
22 through to Jeff Kinkaid for ?how do I do this?,
23 those kind of things. So a pretty technical --
24 technical person on the team. He was not in the --
25 No, he wasn't part of the sales team, or customer

1 service, he was the -- the -- the technical guy. I
2 -- I think pretty much the only technical guy they
3 had sort of on staff to support their -- to support
4 their customers.

5 Q. In this email there's some attachments
6 that are attached --

7 A. M'hm.

8 Q. -- to the exhibit, which are various files
9 showing tile patterns. Do you know why Mr. Kinkaid
10 was emailing these patterns to you?

11 A. I believe it was the result of Mark and I
12 brainstorming of some typical patterns that would be
13 saleable. You know, ones that -- Because with the
14 CNC you can do any -- anything, any pattern, any
15 shape. But Mark and I had had some discussions on,
16 you know, what -- what do we think we want to start
17 with and develop. And then he's -- he's had Mark do
18 the programing and come up with ? or, sorry, not
19 Mark, Jeff. He's had Jeff do the programing and
20 send these to me for my review.

21 Q. Did you send anybody at Luxury Bath any
22 patterns of your own?

23 A. I think we -- So these -- These are like
24 secondary-step ones; these were not the ones we
25 started with. The ones we started with were like

1 typical three by six subway, like you would see in
2 an older home, those kind of things. So that's
3 where we started. The same as -- You know, Mark and
4 I both started with those ones. This is like a -- a
5 second step later in the process where he's ?Okay,
6 what else can we make?? And we had had a discussion
7 on what we thought we would sell, so he was sending
8 these to me based upon that conversation, is how I
9 recall. Some modern ones, some traditional ones.

10 Q. And do -- do you recall sending any
11 patterns to Luxury Bath?

12 A. No, I don't have the -- the software to do
13 that, so I -- I don't believe I sent anything like
14 this. It was just a verbal discussion.

15 Q. Mr. Whitley, I'm handing you what we've
16 marked -- Wait.

17 Actually, what was that last exhibit?

18 MADAM REPORTER: Six.

19 MR. REMUS: Sorry, I'm off one.

20 MADAM REPORTER: We're on seven.

21 MR. REMUS: We are on seven?

22 MADAM REPORTER: M'hm.

23 BY MR. REMUS:

24 Q. I'm handing you what we've marked as
25 Exhibit 7, which is an email thread bearing

1 production numbers MBP-000026 through 27.

2 (Whereupon J. Whitley Exhibit No. 7 was marked)

3 Do you recall seeing this email thread
4 before?

5 A. Yes.

6 Q. I want you to look at the second email
7 thread, second from the top. The one from Mary
8 Riordan --

9 A. M'hm.

10 Q. -- to you. Do you see that there?

11 A. I do.

12 Q. Do you know who Mary Riordan is?

13 A. Yes, I do.

14 Q. Who is she?

15 A. Mary was with Luxury for a very short time
16 immediately after Michael Krawitz was terminated.
17 Mark Domanico stepped in as CEO for a short time. I
18 don't think that went very well for the company and
19 then Mary had stepped in to run the day-to-day
20 operations. I do not know -- I was not party to her
21 hiring, or who hired her, or anything else like
22 that. But I do -- I do recall that things had not
23 gone very well with Mark stepping back to run the
24 day-to-day operations of the company. That's not
25 really his forté.

1 Q. Okay. So in this email Mary was asking
2 about finding time to chat, and then in response you
3 propose some -- some times. Do you recall whether
4 or not that phone call actually happened?

5 A. I believe it did. I had many
6 conversations with Mary, yeah.

7 Q. Do you recall what was discussed on that
8 phone call?

9 A. Most -- With Mary they were not typically,
10 you know, heavy technical discussions; most of it
11 was really into software, helping them out of their
12 -- their business trouble, financial and -- and
13 business trouble. Mary loved my software. She was
14 a big supporter of the -- you know, trying to work
15 together, and I'm not sure if she had enough clout
16 at that point in time to make it happen
17 singlehandedly with the other shareholders, but it
18 certainly -- that's the type of thing -- She was
19 very interested. She couldn't believe -- She was
20 new to the company, she's not from the bath
21 industry. So I don't know if you -- don't know
22 where she came from, but she was a very sharp
23 cookie, even for a lawyer. She was a lawyer.

24 Q. It's a low bar. In -- In Mary's email she
25 refers to a few concepts --

1 A. M'hm.

2 Q. -- that she wanted to run by you. Do you
3 recall what those concepts were?

4 A. I believe they were business concepts, not
5 -- not CNC grooving or technical concepts. They
6 were concepts of us -- us helping them with our
7 business systems more so than anything product-
8 wise.

9 Q. Mr. Whitley, I'm handing you a document
10 we've marked as Exhibit 8, and it bears production
11 numbers MBP-000048 through 53.

12 (Whereupon J. Whitley Exhibit No. 8 was marked)

13 This is again a -- another email thread
14 that has been produced to us. Is this an email
15 thread you recall seeing previously?

16 A. Yes.

17 Q. Do you recall generally what the subject
18 of this email thread was?

19 MR. HALVERSON: Objection. Form.

20 A. This was deep into the time period where
21 Luxury Bath was struggling financially business-
22 wise. Mark had stepped back in. You can see his
23 title is CEO; it was not CEO previously. So this
24 was during that time period where they were
25 struggling; he was trying to change our payment

1 terms because they had cashflow issues.

2 Q. Was there ever any -- any discussion about
3 Milestone acquiring Luxury Bath?

4 A. No.

5 Q. On the very first page of Exhibit 8 in the
6 third bullet-point in Mark's email to you he refers
7 to litigation or a lawsuit between Bath Solutions
8 and you. What is that litigation?

9 A. That's the franchising entity that I sold.

10 Q. Okay. And what -- Who is Five Star?

11 A. That's the company that bought the
12 franchising entity from me.

13 Q. Okay. And so the litigation was between
14 Milestone and Five Star over Bath Solutions?

15 A. Correct. Well, it was -- The business was
16 still -- was Bath Solutions Inc., was my business I
17 still owned, and I sold Bath Solutions Dealership
18 Corp. Inc., which owned the trademark Just Bath
19 Solutions for doing bathroom renovations.

20 Q. Mark comments that he did not want to get
21 involved in the lawsuit between Bath Solutions and
22 you, and ?I don't want to get involved in another
23 lawsuit?. Do you know what the concerns there with
24 Mark getting involved in that lawsuit between you
25 and Bath Solutions?

1 A. I do. The -- The Five Star people
2 basically went to Mark and said we have the rights
3 to buy the product, which was not correct. Bath
4 Solutions Dealership Corp. Inc. never had the rights
5 to be the Canadian distributor. In fact their
6 company didn't sell product; all they did was
7 collect royalties. So not -- The principal in
8 particular at Five Star, in a pretty low way, went
9 to Mark, and then I explained to Mark. I offered to
10 show him the documents, I offered to show him who
11 owned the -- who owned the corporation still of that
12 day, and his answer back is "Oh, I just don't want
13 to get involved?". Well, he was trying to -- he was
14 trying to play both sides, which this is a --
15 perhaps the beginning of the end of my relationship
16 with Mark for many years. It led to some other
17 things as well where they were breaching their
18 agreement and cheating on us, and then lied about
19 it. So that's the -- perhaps some of the start of
20 that in this email.

21 Q. Okay. How did the lawsuit involving Bath
22 Solutions and Five Star end?

23 A. It settled. One of us got a cheque. The
24 guy with the smile. It was a failure to pay, was
25 the main --

1 Q. I'm handing you a document that we've
2 marked as Exhibit 9. It bears production number
3 MBP-000040.

4 (Whereupon J. Whitley Exhibit No. 9 was marked)

5 And this is an email from Mark Domanico to
6 Scott Rosenbach, copying you, dated August 25th,
7 2015. Do you recall seeing this email briefly --

8 A. Yes.

9 Q. -- before? Do you know why Mark was
10 introducing you to Scott Rosenbach?

11 A. Yes. Luxury Bath was no longer at that
12 point in time, they had gone out of business. Mark
13 sold the assets of Luxury Bath to BCI, a competitor.
14 And so I was looking -- Mark was introducing me to
15 BCI to see if we could put something together to be
16 their Canadian distributor or buy and redistribute
17 product of some sort. So this culminated in -- in a
18 visit to BCI in Chicago.

19 Q. Do you recall when that visit was?

20 A. Not offhand. I think there's another
21 email teeing up the -- the details that might be in
22 the package there, but I don't remember. It would
23 be after this sometime, probably early fall. But I
24 -- I don't know offhand the details.

25 Q. Did Milestone end up buying product from

1 BCI?

2 A. Perhaps a small amount for a short period
3 of time, but because the Luxury Bath colors and
4 patterns and everything went over to BCI, so we may
5 have filled some orders and -- and done some things
6 short term but not longer term.

7 Q. The last line, or the last paragraph of
8 this email says ?Jeff would like you to call him
9 ASAP to introduce himself?. Do you recall if Scott
10 called you?

11 A. We spoke on the phone.

12 Q. What was discussed?

13 A. Just a brief introduction and the invite
14 to -- to visit and see if we could come up with --
15 come up with a distribution plan.

16 Q. I'm going to hand you what we've marked as
17 Exhibit 10, which is a document bearing production
18 numbers MBP-000038 through 39.

19 (Whereupon J. Whitley Exhibit 10 was marked)

20 This is an email from Mark Domanico to
21 you, copying Scott Rosenbach. Do you recall seeing
22 this email previously?

23 A. Yes.

24 Q. Do you recall if you ever wrote back to
25 this email?

1 A. I believe I did.

2 Q. All right. Do you recall what that
3 response was?

4 A. I believe I went there.

5 Q. Okay. What was -- When you visited in
6 person what was discussed?

7 A. I had a facility tour, met some of the
8 people there; we discussed the basics of if I could
9 distribute their product at a -- similar to what I
10 had done with Luxury. They were not interested in
11 that at all.

12 Q. Why --

13 A. We had dinner.

14 Q. I'm sorry, continue.

15 A. Did you ask why?

16 Q. Well yeah, why weren't they interested in
17 that?

18 A. I don't think I can speak fully for them
19 but basically they -- at that point they said ?We
20 can -- We can distribute into Canada ourselves?. It
21 was okay by me. It wasn't a make -- It was not a
22 make-or-break of my business or -- You know, we had
23 our own products we were selling. You know, it was
24 sort of a small additional offering kind of thing
25 that we were doing at that point. So I -- I can't

1 speak to why they weren't interested but they were
2 not interested.

3 Q. Yeah, well, it -- I should have asked a
4 better question, as do you -- did they explain to
5 you why they weren't interested?

6 A. Only that they could just distribute into
7 Canada directly and they already had been doing that
8 for other customers that weren't mine so that would
9 have perhaps disrupted things, I don't know. But
10 that's -- that was it. They just weren't
11 interested. It was polite, there was no -- no real
12 animosity about it, it was just -- We had a nice
13 dinner afterwards and I flew home.

14 Q. I'm going to hand you a document that
15 we've marked as Exhibit 11, which bears production
16 number MBP-000060. This is an email from Davis
17 Glassberg to jeff@bathsolutions.ca.

18 (Whereupon J. Whitley Exhibit 11 was marked)

19 Do you recall seeing this email before?

20 A. Yes.

21 Q. Is the email jeff@bathsolutions.ca, is
22 that you?

23 A. Yes.

24 Q. In this email -- And if you need to take a
25 minute to review it, certainly take your time. But

1 it refers to a discussion regarding the business
2 relationship with BSI and expansion plans for the
3 future. Do you recall what those discussions were
4 with Mr. Glassberg?

5 A. I do not believe I had discussions with
6 Mr. Glassberg. I probably met with Mary, probably
7 had a phone discussion with Mary.

8 Q. Do you know who Mr. Glassberg is?

9 A. I do. He's a o- -- a shareholder, or was
10 a shareholder, of the -- the original Luxury Bath,
11 son of one of the more significant shareholders. He
12 was -- Let's say his normal job there was a lower
13 tier, he was a sales trainer more so. I didn't have
14 -- A very nice man. I named my son Davis after him.
15 Well, I liked the name more so than after him.
16 After -- After a trip to Chicago, as my wife and her
17 best friend were sitting on the couch talking about
18 baby names for my son while he was still in the
19 womb, and that's where Davis came from.

20 Nice man but I didn't do a lot of -- He
21 was always at the events, and he was always there,
22 but I didn't really have any, you know, high level
23 interaction with him, with Davis. He was always the
24 sales training guy, and he came to a few events in
25 Canada to do training for our group of salespeople

1 here.

2 Q. Do you know what the expansion plans for
3 the future were, that are referenced in this email?

4 A. I believe the expansion plan was survival
5 at this point. They really were in trouble, and the
6 CEO had been fired, left them millions in debt, is
7 my understanding. And so I -- This was just -- They
8 were looking for ideas to get out of it. Probably
9 the start of what was a good relationship with Mary.

10 Q. I'm going to hand you what we've marked as
11 Exhibit 12, and this bears production number
12 MBP-000057, which is an email thread from, I guess
13 there's a number of different dates here, but
14 November/December 2014 timeframe.

15 (Whereupon J. Whitley Exhibit 12 was marked)

16 Do you recognize this email thread?

17 A. I do.

18 Q. In the first email in the thread
19 chronologically, the one down at the bottom that you
20 sent on November 9th, 2014. What was the status of
21 the discussions between Luxury Bath and Milestone at
22 that time?

23 A. Again, this is in the period of time where
24 they were in significant trouble and we were
25 discussing that Milestone would take over all the

1 customer service and sales, and sales process, order
2 processing, everything for all of their customers in
3 the U.S. At that point we were only in Canada. And
4 that they would just get orders, they wouldn't
5 really be talking with the customers, we would
6 handle all the customer service pieces and -- and
7 order processing for them.

8 Q. Would --

9 A. So they would give us their -- in our
10 industry we call it a dealer network but basically,
11 they would hand over their customers to us.

12 Q. And would they remain responsible for
13 manufacturing?

14 A. Yes.

15 Q. Would Milestone have any responsibility
16 for manufacturing?

17 A. Not in the U.S. necessarily, although we
18 would -- It just never got to that -- that point.
19 But obviously they were looking to be -- looking
20 that we weren't going to be selling them the product
21 we made in Canada, they would -- because that would
22 put them out of business, right? So this was a way
23 to try to save their business and address some of
24 the problems they had.

25 Q. The -- In your email to Mary, in the very

1 first bullet-point you suggest exchanging NDAs. Do
2 you know if that was ever done?

3 A. It was not done, to my recollection.

4 Q. Why is it that you proposed exchanging
5 NDAs?

6 A. So we could share customer lists and
7 information like that, or they could share theirs
8 with me.

9 Q. Is it your understanding that an NDA is a
10 non-disclosure agreement?

11 A. Yes.

12 Q. In the top email from you to Mark
13 Domanico, in the second paragraph you refer to "your
14 strengths and our strengths". What were the
15 strengths of Luxury Bath that you were referring to
16 there?

17 A. I might have been blowing a little bit of
18 smoke there, but probably that they were
19 manufacturers. You know, they -- they had the
20 vacuum-forming machines to do that type of work. I
21 don't know. At this -- at this period of time we
22 were probably still third party doing some other
23 things. But they had the -- the big warehouse to
24 deal with some of that, so --

25 Q. What were your strengths? "Your" being

1 Milestone's.

2 A. Systematic operation of a multimillion-
3 dollar business would be one. Software would be
4 part of -- part of how we were so systematic. High
5 customer service, high ability to -- to sell without
6 the -- without too much pain and suffering. But you
7 know, from a business standpoint. My personal
8 skills might be a little different than that but
9 nothing that -- That was the business strengths that
10 we would bring to the table.

11 Q. Can we turn to your Declaration, which we
12 marked as Exhibit 3. And I want to turn to Exhibit
13 2 to your Declaration, which is an email thread.

14 A. M'hm.

15 MR. HALVERSON: Oh sorry, Exhibit 2.

16 Q. And we'll, as usual, start at the bottom
17 and work our way up. The bottom email is an email
18 from you dated November 4th to Mary Riordan and Mark
19 Domanico. Do you see that?

20 A. I do.

21 Q. Two people who are cc'd are Tiffany Koll
22 and Laura Dolamore. Do you know who they are?

23 A. They were my employees.

24 Q. What were their positions?

25 A. Tiffany Koll was a manager. Laura, she

1 did a few things in the company. Probably at this
2 time she was doing customer service support stuff.

3 Q. In your email, in the second paragraph
4 starting with "I wanted to share a concern that
5 several people here voiced?". Do you see that there?

6 A. M'hm.

7 Q. Do you know who the people were who you're
8 referring to there?

9 A. The staff primarily, at that point.

10 Q. Do you know how many people voiced that
11 concern?

12 A. I don't recall.

13 Q. And you're -- That paragraph explains
14 "Everybody here was concerned with the sharp edges
15 at the grout lines?". Do you see that there?

16 A. Yes.

17 Q. And you noted "Perhaps you have even heard
18 this before?". Why did you think that perhaps Mark
19 had heard that before?

20 A. I had had a discussion with him on that
21 issue, and I think he felt the same way. He -- He
22 wasn't trying to say it was good, he was -- he knew
23 that was a problem. Just didn't have a solution.

24 Q. In the -- Staying in that same email, the
25 bottom email, in the second paragraph you say

1 ?Although we really love the concept, everybody here
2 was concerned with the sharp edges?. What is the
3 concept that you were referring to in that email?

4 A. The concept of the grooved -- the grooved
5 wall systems.

6 Q. And then in response to your November 4th
7 email, on November 5th Mark Domanico responds ?We
8 have already ordered a rounded bit for our CNC
9 router. Mary wanted you to have the samples ASAP.
10 No one else has samples yet?. Do you see that
11 response?

12 A. I do.

13 Q. Do you recall if you ever responded to
14 that email?

15 A. I don't recall if I responded to that
16 particular email. I would have -- It should have
17 pulled up in my search if I did, so I -- likely not.

18 Q. Do you recall ever having further
19 discussions about the CNC process to make a
20 simulated tile sheet after this email?

21 A. I don't recall.

22 Q. Is this email that you attach to your
23 Declaration the full extent of the documented
24 discussions that you've had with Mark about the use
25 of a rounded bit and a shallower cut?

1 MR. HALVERSON: Objection. Form.

2 A. I know it's the primary email
3 documentation. I don't recall if there was anything
4 after this at all.

5 Q. And you don't have any other documents,
6 notes, lab notebooks, anything else in written form
7 that shows this idea of using a rounder bit to make
8 a shallower cut, do you?

9 A. In document form, not at this time.

10 MR. REMUS: Why don't we, if it's okay with you
11 guys, take a short break? I just want to check
12 my notes. I should be able to wrap up, but why
13 don't we just take a short break and then we
14 can see where we stand. Sound good?

15 MR. HALVERSON: Sounds good.

16 MR. REMUS: All right, we can go off the
17 record.

18 MR. JEWELL: Going off video record, the time
19 is now 17:11 UTC.

20 (OFF THE RECORD)

21 MR. JEWELL: Back on the video record, the time
22 is now 17:14 UTC.

23 BY MR. REMUS:

24 Q. Mr. Whitley, are you under any obligation
25 to assign your inventions to Milestone or any other

1 company?

2 A. Yes.

3 Q. What are those obligations?

4 A. The new owners. I've got a rep and
5 warranty in our -- in our share purchase agreement.

6 Q. What is that rep and warranty?

7 A. The -- The rep and warranty covers this
8 issue, if it ever got to this point, because of the
9 initial -- the initial cease and desist went away
10 for multiple years. So I disclosed that to the new
11 owners, that that was a legal threat on the books,
12 as I should. So I gave them a rep and warranty. As
13 part of that Milestone has a right to sell this
14 product, and if I'm successful in getting named as a
15 patent holder it will be assigned to Milestone in
16 some -- in some form, not -- not -- At that point in
17 time we didn't think I would be the named patent
18 holder but the form of that is yet to be determined.
19 But I have an obligation to let Milestone sell this
20 product.

21 Q. Why didn't you think you would be a named
22 inventor at that time?

23 A. There was no --

24 MR. HALVERSON: I'm just going to object to --

25 Just a second.

1 To the extent you can answer that question
2 without revealing any communications or advice
3 you had with a lawyer, you're welcome to.

4 THE DEPONENT: Okay, can you --

5 MR. HALVERSON: Would it --

6 THE DEPONENT: Okay.

7 MR. HALVERSON: Just be mindful of not
8 inadvertently waiving privileged
9 communications that --

10 THE DEPONENT: Okay, can you repeat the
11 question, or the last part there?

12 MR. REMUS: Do -- Do you have the question,
13 Laurie?

14 MADAM REPORTER: I can play it back.

15 MR. REMUS: Oh no, that's fine.

16 BY MR. REMUS:

17 Q. Do you believe that you should be a named
18 inventor of the 243 patent?

19 A. Yes.

20 Q. When did you form that opinion?

21 A. At the first receipt of the cease and
22 desist, which I believe was somewhere around 2020.

23 Q. And why do you believe you should be a
24 named inventor?

25 MR. HALVERSON: Just same caution from before.

1 A. Because I was highly involved in the
2 development of this product.

3 Q. Do you believe that you conceived of any
4 aspect of the invention that's described in the 243
5 patent?

6 A. I do.

7 Q. Okay, what aspect is that?

8 A. The --

9 MR. HALVERSON: Objection. Form. Calls for a
10 legal conclusion.

11 A. The fit and finish of the grooving and how
12 the bit was used in order to get that to a final
13 product.

14 Q. Do you believe that it was inventive to
15 have rounded simulated grout lines?

16 MR. HALVERSON: Same objection.

17 A. Yes.

18 Q. Why?

19 A. I don't believe Mark would have got there
20 in -- in -- certainly not in the same time period.
21 I was involved in some of the other part of the
22 process as well, but this part he -- he did not get
23 there without my help.

24 Q. And was your contribution something that
25 you think was inventive and not well-known?

1 MR. HALVERSON: Objection. Form. Asked and
2 answered.

3 A. Sorry, can you repeat the question?

4 Q. Sure. Do you think your contribution was
5 something that was inventive and not well-known?

6 MR. HALVERSON: Same objection.

7 A. I thought the whole project was relatively
8 simple. However, being that it turned out
9 differently in the end, that portion has -- has
10 certainly changed my mind that it is inventive.

11 Q. What changed your mind?

12 A. Well, the -- the patent document and
13 reading through it. It's something I thought was
14 relatively simple, no discussions regarding
15 patenting this. So I don't believe at the time
16 Mark found that it was earthshattering to our
17 industry or highly technical enough for a patent. I
18 think we both felt that way. But obviously it's a
19 little different circumstance now when you look at
20 the -- an accepted patent. And because it was
21 accepted I -- I have a very strong belief that I
22 should have been a co-inventor on that because I was
23 involved at that level.

24 Q. In -- In your opinion was the use of
25 rounded grout lines inventive in 2015?

1 A. Well, the --

2 MR. HALVERSON: Objection. Form. Calls for a
3 legal conclusion.

4 A. It was a 20?13/20?14 discussion, not
5 20?15.

6 Q. Okay, so as of that time period do you
7 think it was inventive to simulate grout lines that
8 were rounded?

9 MR. HALVERSON: Objection. Form.

10 A. So in that time period when I was there
11 did I think it was inventive?

12 Q. Yes.

13 A. No.

14 Q. Did you ever apply for a patent on the
15 subject matter that is described in the 243 patent?

16 A. No.

17 Q. Why not?

18 A. Did not feel it was patentable.

19 MR. REMUS: At this time BCI does not have any
20 further questions for Mr. Whitley based on the
21 limited scope of discovery allowed by the
22 Court.

23 BY MR. HALVERSON:

24 Q. Very briefly, Mr. Whitley. Do you recall
25 being asked a couple of questions earlier this

1 morning by Mr. Remus about the dates of our own
2 products, and you asked for an email to help refresh
3 your recollection about those dates. Do you recall
4 that?

5 A. Yes, early in our conversations. Sorry,
6 my phone's going off here.

7 Q. Did you receive that email as an exhibit
8 in the process of the rest of the deposition today?

9 A. I don't -- I don't remember the initial
10 question to be honest.

11 Q. So I guess putting it in different terms,
12 given that you weren't given the information as you
13 wanted at the point in time to answer that question,
14 did any of the emails that you looked at as the
15 deposition progressed help refresh your recollection
16 about when it was that Milestone first began its own
17 independent investigation into using a CNC machine
18 to grout -- rout out grout lines?

19 A. Yes.

20 Q. And what is that timeframe?

21 A. That is 2014.

22 Q. Do you also recall being asked a number of
23 questions about your conversations with Mr.
24 Domanico?

25 A. Yes.

1 Q. You used the term "recant", that happened
2 both in some questions and some answers when you
3 were talking about writing down or memorializing
4 those conversations. When you used the term
5 "recant" there, did you mean remember or recall?

6 A. Recall, yes.

7 Q. And then did Mark ever say anything to you
8 -- Excuse me, let me start over. Did Mr. Domanico
9 ever say anything to you about why he didn't intend
10 to patent the CNC idea?

11 A. He did. He told me he never thought it
12 was a -- a patentable idea until his -- until his
13 legal counsel suggested it to him.

14 MR. HALVERSON: I have no further questions.

15 MR. REMUS: Nothing further from BCI.

16 MR. HALVERSON: We can go off. Oh, the witness
17 will read and sign.

18 MR. JEWELL: Going off -- Going off the record.

19 The time is now 17:23 UTC.

20 (EXAMINATION CONCLUDED)

CERTIFICATION

THIS IS TO CERTIFY THAT the foregoing
is a true and accurate transcription from the
record, made by sound recording apparatus,
to the best of my skill and ability.

Barbara Summers

Barbara Summers

Quality Control for LAURIE BARKER

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1 Errata Sheet

2

3 NAME OF CASE: BCI Acrylic vs Milestone Bath Products - 12-06-23 - Jeffrey Whitley

4 DATE OF DEPOSITION: 12/06/2023

5 NAME OF WITNESS: Jeffrey Whitley

6 Reason Codes:

7 1. To clarify the record.

8 2. To conform to the facts.

9 3. To correct transcription errors.

10 Page ____ Line ____ Reason ____

11 From _____ to _____

12 Page ____ Line ____ Reason ____

13 From _____ to _____

14 Page ____ Line ____ Reason ____

15 From _____ to _____

16 Page ____ Line ____ Reason ____

17 From _____ to _____

18 Page ____ Line ____ Reason ____

19 From _____ to _____

20 Page ____ Line ____ Reason ____

21 From _____ to _____

22 Page ____ Line ____ Reason ____

23 From _____ to _____

24

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